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THE ARAB BOYCOTT AND AMERICAN BUSINESS

REPORT

BY THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

with

ADDITIONAL AND MINORITY VIEWS

HOUSE OF REPRESENTATIVES

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An inquiry into the nature and scope of the Arab trade boycott, its impact on domestic commerce, the applicability of Federal laws to foreign-imposed boycott practices

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SUMMARY

The boycott of Israel by the Arab countries raises basic and often conflicting legal, economic and political issues for the United States. It has brought into question the applicability of a variety of U.S. laws especially antitrust and civil rights laws, laws affecting the banking industry, and securities laws affecting corporate behavior and disclosure. It has also raised the question of whether there is need for new law.

The Arab boycott is an aspect of the larger Arab-Israeli conflict in which U.S. foreign policy interests are involved. The boycott has had a significant impact within the United States and raises fundamental issues concerning our commitment as a people to principles of free trade and freedom from religious discrimination. (See pages 1–3.)

Although the Arab economic boycott against Israel and its supporters has formally been in existence for 25 years, its impact throughout the world began to increase dramatically in late 1974 following the fourfold petroleum price increase brought on by the Arab oil embargo. Accordingly, an investigation into the domestic effects of the boycott was commenced in March of 1975 by the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce upon the request of Rep. James H. Scheuer, a subcommittee member.

In July 1975, the subcommittee sought from the Department of Commerce copies of "boycott reports" filed with the Department over the past 5 years. Pursuant to the Export Administration Act, (50 U.S.C. 2403(b)), U.S. exporters receiving requests to participate in foreign imposed restrictive trade practices or boycotts are required to report to the Commerce Department the facts surrounding those requests. (See pages 4–6.)

When the then Secretary of Commerce, Rogers C. B. Morton, refused to voluntarily provide the reports, the subcommittee, on July 28, 1975, issued a subpena duces tecum. On September 22, 1975, pursuant to the subpena, Secretary Morton appeared before the subcommittee to explain his refual to furnish the documents.

Secretary Morton testified that section 7(c) [1] of the Export Administration Act prohibited him from disclosing the reports to Congress. Subcommittee Chairman John E. Moss noted that the statute does not refer to Congress and that statutes should not be interpreted to preclude Congress from obtaining documents needed to carry out oversight duties under article I of the Constitution unless they do so

[1] 50 USC App. 2406(c).
Section 7(c) of the Act states:
"No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest."

expressly, not as the Secretary argued, by implication. Secretary Morton again refused to comply.

The subcommittee examined the issues raised by the Secretary and found them legally unsupportable. On November 11, 1975, it approved a resolution by a vote of 10 to 5 finding the Secretary in contempt of Congress and referring the matter to the Committee on Interstate and Foreign Commerce for appropriate action.

On December 8, 1975, 1 day before the contempt matter was to be brought before the full committee, the Secretary agreed to provide the subpenaed documents. The subcommittee received them in executive session pursuant to rule XI (k) (7) of the Rules of the House of Representatives.[2]

Examination of the reports furnished by Secretary Morton was necessary in evaluating the impact of the boycott on domestic commerce because the reports provided the only comprehensive data base on restrictive trade practices imposed by foreign concerns on American business. The antiboycott provisions of the Export Administration Act are the only Federal law dealing directly with these practices. As part of this review, subcommittee staff examined at least 30,000 subpenaed report documents.

The pattern of Commerce Department activities studied by the subcommittee indicates that the Department, at best, did a bare minimum to carry out the mandate of the foreign boycott provisions of the Export Administration Act. By actions such as distributing to U.S. businesses "trade opportunities" containing boycott clauses, the Commerce Department actually furthered the boycott by implicitly condoning activity declared against national policy by Congress 11 years ago. Administration of the act's boycott-reporting provisions was so poor that the executive and Congress have been effectively deprived of data necessary to determine the scope and impact of, and adequately deal with boycott practices. (See pages 14–17, 23–29.)

The subcommittee found that the reporting practices and policies of the Commerce Department often served to obscure the scope and the impact of the Arab boycott. The subcommittee also found that the impact on U.S. business has been substantially greater than Congress had been led to believe by the Commerce Department. Thus, while boycott activities thrived, the Department generally looked the other way, except when pressed to act by Congress and by public opinion. (See pages 23–37.)

Conclusions

The Subcommittee finds:

(1) The practices and policies of the Department of Commerce have served to thwart full implementation of the antiboycott provisions of the Export Administration Act. The Department has taken action reluctantly and only after Congress urged it to act more decisively. (See pages 14–17, 23–29.)

(2) Through a variety of practices, the Commerce Department actually served to encourage boycott practices, implicitly by condoning activity declared against national policy or simply by looking the other way while these practices grew. For example:

—The Commerce Department circulated to U.S. businesses trade

[2] Rule XI(k)(7) provides "No evidence or testimony taken in executive session may be released in public sessions without the consent of the Committtee."

opportunities with boycott clauses (invitations to bid or do business.) Commerce ended this practice in the fourth quarter of 1975 after it was criticized at a Subcommittee hearing.

—For 10 years, the Commerce Department failed to require companies to answer the question concerning what action the company took in response to the boycott request. Accordingly, most companies chose not to answer that question which is crucial to determining the impact of the boycott practices. After Subcommittee criticism, the Department issued a new regulation to require an answer.

(3) Based on the boycott reports filed with the Department, the Subcommittee concludes that at least $4.5 billion worth of U.S. sales and proposed sales to Arab countries in 1974 and 1975 were subject to boycott requests.

The most common boycott requests by Arab countries were for certificates by U.S. exporters that the goods shipped were manufactured in the United States and "not of Israeli origin"; that the ship transporting the goods was not blacklisted by Arabs and would not stop at an Israeli port en route to Arab countries.

U.S. businesses were also requested to a lesser extent—about 15 percent of all tabulated reports—to certify that they were not blacklisted by Arab countries. Only a few reports were found suggesting that U.S. firms had engaged in a concerted refusal to deal with blacklisted companies. There were 15 reports filed with the Department of Commerce in 1974 and 1975 which contained clauses of a religious or ethnic nature. These included requests by Arab importers that U.S. exporters certify that there are no persons employed in senior management who are of the Jewish faith, Zionists, or persons who have purchased Israeli bonds, contributed to the United Jewish Appeal, or members of organizations supporting Israel. (See pages 32–35.)

(4) The Subcommittee estimates that exporters complied with at least 90 percent of all "boycott requests"—contained in boycott-affected sales documents—reported to the Department during the last 2 years.[3] It was necessary to estimate compliance because prior to October 1, 1975, firms were not required to report what action they had taken in response to boycott related requests. However, the practices complied with do not indicate, according to the reports, that most companies actually boycotted Israel or altered their corporate practices in response to the boycott of Israel. Some reporting companies, for example, make a distinction between passive compliance, particularly the act of providing factually accurate information such as the certificates of origin, and active compliance: aiding, furthering, or participating in the boycott of Israel by refusing to trade with Israel or with firms "blacklisted" by the Arab League. The exporters' boycott reports do not indicate if they stopped doing business with Israel or blacklisted firms, or if so, whether the action was because of the boycott—the fear of losing Arab business. (See pages 7–9, 31–32.)

(5) The reporting forms and regulations used by the Department were insufficient to obtain complete, accurate information about the exact nature of restrictive trade practices being imposed on U.S. business by foreign concerns. Instructions for completing the report-

[3] This percentage is based on the dollar value in boycott affected sales documents cited in Export Administration Act reports filed with the Commerce Department in the fourth quarter of 1975, when firms were required to answer the question about the firms' response to the boycott request.

ing were sketchy at best and made it difficult for the exporters to accurately complete the forms. For example, 10.7 percent of all reporting firms listed the country initiating the boycott as the country also being boycotted. Second, the space available for firms to detail the types of boycott requests received was so limited—two typewritten lines—that most companies were forced to either quote only one of several boycott clauses, attach the entire document containing the clauses to the reporting form, or simply describe the clauses generically—such as, ". . . typical boycott of Israel terms." (See pages 25–28.)

(6) The data reported quarterly and in special reports to Congress was generally meaningless and almost always inaccurate. The Commerce Department, for example, tabulated the impact of the boycott in terms of "transactions" and not dollars. A "transaction" could be one box of nails or a shipload of wheat.

The Commerce Department totaled up the dollar values of reported boycott-affected transactions on only one occasion: a special report to Senator Harrison A. Williams, Jr., which was later used by the Senate Banking, Housing, and Urban Affairs Committee. The Department hurriedly gathered the data from Export Administration Act reports. The crude analysis understated the dollar value of boycott-affected transactions. Their auditing method produced substantial distortions. (See pages 26–27, 29.)

For 1974, for example, the Department's special report stated that there were $9,948,578 worth of "reported boycott-affected transactions." But when the Subcommittee added up the dollar value of boycott-affected transactions from the same reports filed in 1974 with the Department, it found the actual total is $19,995,719. The Subcommittee discovered that adding the values according to the date in which the boycott requests were reported as received by the exporters resulted in a total of $145.355,113. The value of transactions subject to boycott requests reported as having been received in 1975 rose dramatically to $4,402,333,887, the Subcommittee found.

The boycott clauses cited by the Commerce Department in its reports to Congress included several duplications and excluded clauses related to blacklisting of firms and religious discrimination. Furthermore, when the clauses in the report and the boycott documents attached to the report were compared with the coding marks of Commerce Department clerks purportedly stating the types of clauses contained in the reports, it was found that at least half of the coding was in error, usually because it omitted clauses contained in the report. (See pages 26–29.)

(7) Information specialists for the Congressional Research Service, Library of Congress, evaluated for the Subcommittee the reporting form designed by the Commerce Department for exporters to use to report the receipt of foreign imposed boycotts. The CRS analysts summarized some of the deficiencies they found as follows:

"The form was designed to fulfill the minimum requirements of the law. The form was not designed to facilitate data collection or retrieval. The tabulation procedure was not considered as a necessary part of the approval of the form. No provision was made for easy convertability into machine readable format. The reporting requirement was progressively relaxed through changes in the regulation to accommodate the needs of firms required to file the form."

(8 ts of the Commerce Department reporting forms were submitted to industry lobbyists representing the Machinery and Allied Products Institute and the World Trade Department Automobile Manufacturers Association, Inc. prior to being issued to the public. Files at the Office of Management and Budget on the history of the reporting form show no input from persons outside of Government except for lobbyists for these groups. The suggestions of these lobbyists—purportedly to reduce paperwork—were adopted by the Department. However, the Department's final reporting regulations reduced the value and quantity of data, without necessarily reducing the burden on those who must file the reports. (See pages 80–85.)

(9) Commerce Department reporting regulations contained numerous loopholes that allowed domestic business concerns to evade the reporting mandate of the act, including the following examples:

Despite the fact that the Export Administration Act requires the President or his designate to "require all domestic concerns" to report the facts surrounding the receipt of a request to participate in a foreign imposed restrictive trade practice or boycotts, the Commerce Department regulations for 11 years required only exporters to file the reports. It was not until December 1975, that the Department changed its regulations to also require reports from what are called service organizations: banks, freight forwarders, and insurance companies. (See pages 23–29.)

Commerce Department reporting regulations called for "U.S. exporters" to file the reports. Therefore, some American based multinational corporations were able to take the view with at least the tacit approval of Commerce Department officials, that a U.S. parent company is not expected to report a boycott request when the request is received by one of the company's foreign subsidiaries without the actual knowledge of the parent company; that they could establish trading companies as subsidiaries in foreign countries to facilitate trading with Arab countries and thus avoid the reporting requirement of the Commerce Department regulations. (See pages 24–25.)

Commerce Department regulations, ostensibly to avoid paperwork for reporting firms, allow for reporting only the first document received as part of a given transaction. This may have enabled firms to have reported boycott requests related to trade opportunities without reporting that it later resulted in a sale. (See pages 23–26, 80–85.)

(10) Federal antitrust, securities, and civil rights laws are useful tools to combat some domestic aspects of the Arab boycott. A more vigorous Commerce Department program for obtaining and analyzing data from businesses on boycott activities could considerably enhance the enforcement of antitrust, securities, and civil rights laws by providing the Federal Government and the investing public with more complete information about Arab boycott practices and the responses of American firms to those tactics. Moreover, amendments to the Export Administration Act to allow public access to boycott data and to define impermissible boycott related activities are needed. (See pages 54–58.)

(11) The United States has a competitive advantage over other industrial nations in its export of agricultural products and a large variety of manufactured goods. Accordingly, a shift in spending Arab

petrodollars with other countries as the result of stronger antiboycott measures by the United States is less likely. However, there still remains a need for increased diplomatic activity in order to minimize any impact of foreign-imposed restrictive trade practices on domestic commerce. (See pages 36, 45–47.)

(12) For over 10 years, the Commerce Department has opposed the enactment of measures against foreign-imposed boycotts. Since Congress added antiboycott provisions to the Export Administration Act in 1965, the Commerce Department has consistently opposed amendments to the act to strengthen it. The subcommittee finds that vigorous congressional oversight by those committees having jurisdiction over the Export Administration Act is necessary to insure adequate enforcement of boycott related laws. (See pages 28–29.)

Recommendations

The Subcommittee recommends:

(1) The Export Administration Act should be amended to prohibit all agreements to refrain from doing business (a) with a foreign country friendly to the United States, or (b) with a company or supplier boycotted by a foreign concern, thereby furthering a foreign-imposed boycott or restrictive trade practice.

The Act should contain criminal penalties sufficient to provide a strong deterrent to these practices. The Commerce Department should be required to report all probable violations of this prohibition to the Justice Department.

(2) The Export Administration Act should be amended to prohibit U.S. businesses from providing information directly or indirectly to any foreign concern about race, creed, national origin, sex, religion or political beliefs of any citizen, including contributions to or association with philanthropic organizations such as the United Jewish Appeal, when the person furnishing the information knows or should know that the information is for the purpose of discriminating against or boycotting any person or concern.[4]

(3) The Export Administration Act should be amended to prohibit persons from providing information directly or indirectly to any foreign concern as to whether that firm or any of its subsidiaries or subcontractors is "blacklisted" or boycotted by any foreign concern.

(4) The Export Administration Act should be amended to allow domestic businesses to provide importers or agents for importers only affirmative factual information relating to the origin of goods manufactured or produced, the name of the manufacturer, the name of the insurer of the goods, the name of the vessel transporting the goods and the owner or charterer of the vessel. This information could be provided on business documents in the following fashion:

The products are of U.S. origin.

The producer or manufacturer of the product is _____.

The name of the vessel is _____ and it is owned or chartered by _____.

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[4] Pursuant to the Export Administration Act, and at the direction of President Ford, the Commerce Department issued a regulation in December of 1975 prohibiting any action "that would have the effect of discriminating against U.S. citizens or firms on the basis of race, color, religion, sex, or national origin."—Section 369.2 of the Export Administration Regulations. 15 CFR 369.2.

(5) The Commerce Department should immediately begin to improve the quality of its information collection, assimilation, and retrieval system. Toward that end, the Department should improve the quality of its reporting form and make the instructions easier for businesses to follow.

(6) The Export Administration Act should be amended to provide for public access to filed reports, except for the name of the foreign buyer, description of the commodities shipped and their cost so as to adequately protect proprietary information. Public disclosure would aid compliance with the reporting requirements of the act and help prevent U.S. business from being used as a tool of the economic warfare of foreign nations, consistent with the policy set forth in the Export Administration Act.

(7) The President should increase the level of diplomatic efforts in order to minimize the impact of foreign-imposed restrictive trade practices on American commerce. These efforts could include forming alliances with other industrialized nations for the purpose of establishing basic international business ethics and standards.

(8) Given the Commerce Department's poor record in carrying out the statutory policy against foreign-imposed boycotts, the subcommittee recommends increased congressional oversight of the Commerce Department by committees having jurisdiction over the Export Administration Act.

THE ARAB BOYCOTT AND AMERICAN BUSINESS

CHAPTER I.—INTRODUCTION

ISSUES

The boycott of Israel by the Arab countries raises fundamental and frequently conflicting legal, economic, and political issues for the United States. It has brought into question the applicability of U.S. antitrust and civil rights law, laws affecting the banking industry, and securities law affecting corporate behavior and disclosure. It has also raised the question of whether there is need for new law. The Arab boycott is part of the larger Arab-Israeli conflict in which U.S. foreign policy interests are involved and it has had a significant impact within the United States. The boycott also raises fundamental issues concerning our commitment as a people to basic principles of free trade and freedom from religious discrimination.

The Arab boycott against Israel, although involving a wide variety of practices, takes three basic forms. The primary boycott is a refusal by the Arab states to deal commercially with the State of Israel or its nationals. An extension of this, the secondary boycott, is the refusal to deal with non-Israeli supporters of Israel.

In addition, the Arab boycott involves a tertiary boycott, also known as an extended secondary boycott, in which certain Arab States refuse to do business with firms or individuals which are not themselves supporters of Israel but do business with others who are considered to be supporters of Israel. In other words, the Arab tertiary boycott implicitly or explicitly involves requesting a neutral person "A" not to do business with "B" because "B" does business with or otherwise supports Israel. For purposes of implementing the boycott, the Arab League countries maintain blacklists of firms which are considered pro-Israeli. The latter two elements of the boycott structure, the secondary and tertiary boycotts, carry with them an implied conflict with U.S. antitrust law.

The unique nature of the target of the boycott, Israel, presents a somewhat novel problem in the history of boycotts, one which raises the possibility of conflict with U.S. domestic civil rights law. This can occur, for example, when a U.S. corporate official refrains from hiring, assigning, or promoting persons on the basis of their Jewish faith in order for the firm to obtain business with Arab countries. Israel is not only a sovereign state but one established for the purpose of providing a homeland for Jews. It remains the symbol of a worldwide religious/ethnic community.

Despite emphatic Arab statements that the boycott is not directed against Jews,[5] in practice the boycott is directed against supporters of Israel, including those living in the United States, many of whom are also members of the Jewish faith.

The belief that the boycott is based on religious discrimination tends to generate a profound American reaction because it strikes closely at U.S. ideals. This aspect of the Arab boycott raises the question of the applicability of U.S. civil rights laws to Arab boycott activities.

A paramount aim of American foreign policy is to facilitate a negotiated settlement in the Middle East in the interest of world peace. The United States has attempted to avoid provoking a confrontation with either side of the dispute. The administration has expressed the view that new measures to reduce the impact of the boycott could jeopardize its role as a mediator and other related foreign policy interests.[6] Indeed, the United States regards both Arabs and Israelis as friends and has sought to promoted the economic growth of their countries.

Another important concern, inextricably tied to U.S. foreign policy, has been the U.S. Government's desire to foster exports to the Middle East in order to recoup some of the dollars the Arabs have accumulated as a result of the fivefold rise in the price of oil. Such exports have a favorable impact on U.S. balance of payments and on domestic employment. In this regard, American business finds itself in the difficult position of being urged to increase exports to the Middle East and at the same time being encouraged not to comply with the Arab boycott.

The trade issue becomes even more complicated in light of the U.S. Government's position with regard to trade restrictions. Historically, the United States has been a leading proponent of free and unrestricted world trade. Opposition to the Arab boycott is consistent with long-standing U.S. commercial policy incorporated by Congress into the Export Administration Act[7] and recently related by President

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[5] In an Aug. 31, 1975, letter to the New York office of the National Association of Securities Dealers, Inc., the Commissioner General for the Central Office for the Boycott of Israel (organized by the League of Arab States) stated that "the boycott authorities do not discriminate among persons on the basis of their religion or nationality, they rather do so on the basis of their partiality or impartiality to Israel and Zionism.' . . . [the boycotts'] purpose is to protect the security of the Arab States from the danger of Zionist cancer . . . to prevent the domination of Zionist capital over Arab National economics, and to prevent the economic force of the enemy . . . from expansion at the expense of the interests of the Arabs."

Administration officials have also said that religious discrimination is not part of the Arab boycott. At a conference on transnational restrictive trade practices at the University of Texas Law School on Feb. 20, 1976, the then Under Secretary of Commerce James Baker III said:

"Contrary to a widely held misconception, the Arab boycott is not intended to discriminate against American firms or citizens on religious or ethnic grounds. It is unfortunate that the terms 'discrimination' and 'boycott' have been viewed by many as being synonymous. While a few boycott requests have been reported to the Department which appear to involve an attempt to discriminate on religious or ethnic grounds, it has been the Department's overall experience that such instances represent isolated acts of individuals rather than the boycott policies of the Arab States."

[6] See, for example, the testimony of William Simon, Secretary of the Treasury, before the House Committee on International Relations, June 9, 1976.

[7] The Export Administration Act (50 U.S. App. 2402) states:

"(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against any other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts, fostered or imposed by any foreign country against another country friendly to the United States."

Ford.[8] However, the United States has also been the architect of a variety of international trade restrictions, largely directed against various Communist nations. Having U.S. trade restrictions and the antiboycott policy both implemented by the Commerce Department exacerbates the policy dilemma.

PURPOSE OF SUBCOMMITTEE INVESTIGATION

In March 1975, the subcommittee commenced an investigation into the domestic implications of the Arab boycott. The inquiry was requested by many persons, particularly Representative James H. Scheuer of New York. Although the Arab boycott against Israel and its supporters has been in existence for 25 years, Congressman Scheuer pointed out that its impact on American commercial practices has apparently increased dramatically following the 500 percent petroleum price increase after the recent Arab oil embargo.

The investigation was begun to determine the nature and scope of the Arab boycott and similar restrictive trade practices imposed on the United States by foreign governments, corporations or citizens, to ascertain how pervasive these practices are; to evaluate the boycott's economic impact on American business, and to find out whether Federal laws related to these practices are effective and are being fully enforced, as well as to make judgments on the need for new law.

THE SUBCOMMITTEE'S JURISDICTION

The subcommittee's jurisdiction arises under the legislative powers of Congress specified in article I of the Constitution and the Rules of the House of Representatives. Rule X establishes the Committee on Interstate and Foreign Commerce and gives it jurisdiction over the following:

Interstate and foreign commerce generally.

Consumer affairs and consumer protection.

Security and exchanges.

Included within the committee's jurisdiction are statutes administered by the Federal Trade Commission and the Securities and Exchange Commission. Section 5 of the Federal Trade Commission Act provides—

> Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful.[9]

Section 10(b) of the Securities Exchange Act of 1934 provides that any "manipulative or deceptive device or contrivance" relating to the sale or purchase of securities is unlawful.[10] In addition, under

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[8] On Feb. 26, 1975, President Ford, in his ninth press conference, set forth the administration's policy as follows:

"There have been reports in recent weeks of attempts in the international banking community to discriminate against certain institutions or individuals on religious or ethnic grounds.

"There should be no doubt about the position of this administration and the United States. Such discrimination is totally contrary to the American tradition and repugnant to American principles. It has no place in the free practice of commerce as it has flourished in this country.

"Foreign businessmen and investors are most welcome in the United States when they are willing to conform to the principles of our society. However, any allegations of discrimination will be fully investigated and appropriate action taken under the laws of the United States."

[9] 15 USC 45(a).

[10] 15 USC 78j(b).

the regulations of the Securities and Exchange Commission public corporations are required to afford stockholders the opportunity to have proxy materials included in the proxy statement sent to Stockholders apparently including such matter relating to the practices of a corporation regarding a proposed boycott request.[11]

Furthermore, under the Securities Acts Amendments of 1975—Public Law 94-29—the Commission has authority to apply to Federal courts to enjoin violation of the rules of any industry self-regulatory organization. The National Association of Securities Dealers' rules of fair practice, which the SEC oversees, require that its members observe just and equitable principles of trade in the conduct of the securities business.

The subcommittee is the oversight arm of the Committee on Interstate and Foreign Commerce with jurisdiction concurrent with that of the full committee. The subcommittee's oversight responsibilities are set forth in rule X of the Rules of the House of Representatives as follows:

> Each standing committee (other than the Committee on Appropriations and the Committee on the Budget) shall review and study, on a continuing basis, the application, administration, execution, and effectiveness of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee, and the organization and operation of the Federal agencies and entities having responsibilities in or for the administration and execution thereof, in order to determine whether such laws and the programs thereunder are being implemented and carried out in accordance with the intent of the Congress and whether such programs should be continued, curtailed, or eliminated.
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> In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee (whether or not any bill or resolution has been introduced with respect thereto), and shall on a continuing basis undertake future research and forecasting on matters within the jurisdiction of that committee.

In the course of this investigation, the subcommittee sought and received information from persons in State and Federal Government, various foreign embassies, the academic community, business, and others from the private sector. Sources in the Federal Government included persons at the Department of the Treasury, Department of Justice, Department of Commerce, the Federal Reserve System, and the Securities and Exchange Commission.

It became apparent, however, that the basic data needed for any systematic and comprehensive examination of this subject was contained in reports required to be compiled by the Department of Commerce pursuant to the Export Administration Act.[12]

The act requires that all American business concerns report to the Commerce Department facts surrounding requests they receive to provide information or take action as part of a restrictive trade practice imposed by one country friendly to the United States againnst another country friendly to the United States.

CONTEMPT PROCEEDINGS

The subcommittee requested copies of these reports on July 10, 1975, from the Commerce Department. On July 24, 1975, then Secretary

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[11] 17 CFR 240-14a-1.
[12] 50 U.S.C. App. 2403(b).

of Commerce Rogers C. B. Morton, wrote to Chairman John E. Moss stating that he would not provide the documents because to do so would expose "firms to possible economic retaliation by certain private groups merely because they reported a boycott request, whether or not they complied with the request." [13] He added: "Such a consequence would not, in my view, be in the national interest. Accordingly, I must decline the request set forth in your letter." [14]

Secretary Morton asserted that he could not provide these reports to the subcommittee because to do so would violate section 7 (c), the confidentiality provision of the act.[15] Subcommittee Chairman Moss pointed out to Secretary Morton that, "section 7(c) does not in any way refer to the Congress and that no reasonable interpretation of the section could support the notion that Congress by implication had surrendered its legislative authority under article I [16] of the Constitution. Chairman Moss said that if Congress were to give up its powers in a statute it would have to do so expressly, not by silence or by implication.

The Secretary requested and obtained an opinion from Attorney General Edward Levi to support his position. The subcommittee received opinions from four constitutional law scholars refuting Secretary Morton's view and that of the Attorney General. All four have written on "Executive privilege" and Congress problems in obtaining information from the Executive. They included Prof. Raoul Berger, Charles Warren, senior fellow in American legal history at Harvard University; Prof. Philip Kurland, who teaches constitutional law at the University of Chicago; Prof. Norman Dorsen, who teaches constitutional law at New York University and is general counsel to the American Civil Liberties Union; and Prof. Burke Marshall, former general counsel of the IBM Corp., who teaches Federal jurisdiction and constitutional law at Yale University.

All agreed that the subcommittee is authorized to compel release of the boycott reports by Secretary Morton, and that section 7(c) of the Export Administration Act is not a lawful bar to the subcommittee's subpena. For example, Professor Berger concluded: [17]

> In my opinion, section 7(c) of the Export Act is not applicable to a congressional demand for confidential information; it does not absolve the Secretary of Commerce from compliance with the subpena of your subcommittee.

Professor Kurland commented:

> . . . I am of the opinion that, as a matter of law [the Secretary and the Attorney General] are wrong in their claim for Executive immunity from congressional oversight in this matter . . .
>
> I urge this subcommittee not to contribute to the continued destruction of congressional authority. The constitutional plan of checks and balances, an essential safeguard for American liberties, is constantly endangered by failure

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[13] Contempt Proceedings Against Secretary of Commerce Rogers C. B. Morton, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, Sept. 22, 1975, serial No. 94–45 (hereinafter referred to as subcommittee hearings), p. 153.
[14] Ibid., p. 154.
[15] Section 7(c) of the act states:
> "No department, agency, or official exercising any functions under this act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest." (50 App. sec. 2406(c))

[16] Subcommittee hearings, p. 4. Also see pp. (III), 47, 101, and 125.
[17] Subcommittee hearings, pp. 47 to 125.

of Congress to assert its authority vis-a-vis the Executive. I trust that this case will not prove another instance of such surrender; the rights at stake are not those of individual Congressmen, they are the rights of the American people whose representatives you are . . .

These opinions were obtained in addition to memoranda from the American Law Division of the Library of Congress on September 19 and from subcommittee legal staff on September 5. The memoranda found the Secretary's position incorrect. With six legal opinions in hand, the subcommittee thoroughly examined the Secretary's position through cross-examination of constitutional experts and 4 days of hearings—including 2 days when the Secretary was present.

After considering Mr. Morton's defense, the subcommittee found him in contempt of Congress on November 11, 1975, by a vote of 10 to 5 and referred the facts and circumstances surrounding that finding to the full committee for appropriate action.[18] It was the first time in history that a member of the President's Cabinet had been found in contempt of Congress, according to legal historians at the Library of Congress.

On December 8, 1975, 1 day before the full committee was prepared to vote on sending to the floor of the House a resolution to hold the Secretary of Commerce in contempt of Congress (resulting in his arrest and detainment until the documents were provided), Secretary Morton agreed to provide the subcommittee with the subpenaed documents. Secretary Morton's decision to surrender the documents came after the chairman of the subcommittee said he would receive them in executive session in accordance with rule XI(k)(7) of the Rules of the House of Representatives.[19] Thus, the contempt proceedings against the Commerce Secretary became moot and the subcommittee received approximately 12,000 Export Administration Act report documents needed to conduct its investigation.

THE SUBPENAED REPORTS

The documents' value to the subcommittee's investigation was summarized by Chairman Moss during the subcommittee's September 22, 1975, hearing. He said:

To find out what the effect of the boycott on our country has been, the subcommittee and ultimately the Congress needs answers to such questions as: How many companies have complied with boycott requests, and why? What kinds of products are covered? Have firms which have refused to comply lost business? Have they suffered a competitive disadvantage? In dollars and cents, how much money is involved? Are the stocks of such companies traded on the U.S. stock exchanges? What steps should the Conferees take?[20]

The goal of the subcommittee's analysis of the document was to determine (1) the nature, scope, and impact of the boycott(s); (2) the nature and extent of participation by American firms; (3) the effectiveness of the Commerce Department's administration of the boycott provisions of the Export Administration Act; (4) the utility of exist-

[18] A summary prepared by the subcommittee and presented to the Committee on Interstate and Foreign Commerce for consideration in its proposed contempt proceedings. Copies of the exchange of letters between chairman Moss and Secretary Morton, and the Subcommittee resolution, are provided as app. A. Also, see Subcommittee hearings.

[19] Rule XI(k)(7) provides: "No evidence or testimony taken in executive session may be released in public sessions without the consent of the committee."

[20] Subcommittee hearings, p. 1.

ing laws; and (5) the need, if any, for new law. Relevant questions to be answered included: How many U.S. firms received boycott requests? What proportion of U.S. foreign trade was subject to boycott requests? What was the dollar value of trade conducted under Arab boycott regulations? What commodities and industries were involved?

What kinds of actions were American companies asked to take or refrain from taking? What did these companies actually do? How widespread was the problem of religious discrimination? Were there antitrust implications to any of the actions of American companies? Were any companies placed at a competitive disadvantage by refusing to comply with a boycott request by being "blacklisted"? Did any companies lose business as a result of the operation of the boycott? Many more questions arose as the study proceeded; some questions remain unanswered.

IDENTITY OF FIRMS

There have been a substantial number of requests to the subcommittee for a Commerce Department list of firms who boycott Israel. These requests, and the reference to a list, apparently stem from the description in news accounts of the Export Administration reports filed with the Commerce Department by U.S. exporters and subpenaed by the subcommittee from the Department. These reports, however, do not constitute a list, and the Commerce Department has never compiled a list of firms complying with boycott requests. The Commerce Department reports obtained by the subcommittee comprised at least 30,000 documents. Publishing them would require several large volumes.

While it was generally possible to determine the rate of compliance with requests reported, on the basis of the reports alone, it was impossible to determine to what extent U.S. firms boycotted Israel. Deficiencies in the Commerce Department's administration of the statutory reporting requirement are largely responsible for not being able to make that determination with complete certainty.

The subcommittee observes that knowing how a particular company responded to a boycott related request means little unless it is examined in the context of what the firm was asked to do. Usually there were several request clauses cited in a single report. And most reporting firms filed numerous reports in a given year. A company's answer to a boycott request often varied from one request to another. Thus, reporting what each of more than 600 companies did individually over this particular 2 year period could be misleading and unfair to particular firms because of the inadequacy of the information available.

Efforts by the subcommittee to compile a list or chart on compliance were made considerably more difficult since firms were not required to report to the Department what action they took in response to the boycott request. The Commerce Department did not make answers to the compliance question mandatory until October 1, 1975. Accordingly, the information the subcommittee has is incomplete.

Some reporting made a distinction between passive compliance, particularly providing factually accurate information such as the certificates of origin, and active compliance—aiding, furthering, or participating in the boycott of Israel by refusing to trade with Israel firms

"blacklisted" by Arab countries. Some examples will help to make this distinction clearer. Many companies reported that they had signed statements declaring that they do not have a subsidiary in Israel. Some, however, explained that while this statement was factually accurate, it did not involve any change in their corporate structure or corporate policies. Some companies indicated that they had provided a certificate of origin indicating that the exported goods were wholly of U.S. manufacture or did not contain any Israel components but indicated this was a statement of fact and did not involve any change in their suppliers. The same was also true of companies who signed statements that they were not blacklisted. Indeed, some companies indicated that, although they signed certificates that they were not blacklisted, they had not seen a copy of the blacklist, and, therefore, really did not know whether they were blacklisted. Nevertheless, to expedite payment, firms apparently certified that they were not blacklisted.

To the extent that conduct of firms could be ascertained from the Commerce Department documents, it has been described in this report in generic terms. At this time, the subcommittee believes that composite figures are sufficient to perform its duty of oversight. There are, however, several bills pending in Congress to make Export Administration Act reports public on demand with the exception of specific proprietary information. The subcommittee supports this proposed legislation. In the meantime, the subcommittee will retain its copies of the subpenaed reports to use for its ongoing investigation.

CHAPTER II.—THE ARAB BOYCOTT: AN HISTORICAL PERSPECTIVE

INTERNATIONAL CONTEXT

The Arab boycott is not entirely unique in relations among sovereign states. The practice of one state boycotting another is one of a number of traditional techniques of exerting economic pressure to achieve desired, mostly political, ends. Other techniques include export and import embargoes, licensing systems, blacklisting, prohibitions on reexportation, preemptive buying, controls on shipping, foreign exchange controls, and the blocking, freezing, or vesting of assets. Techniques of economic warfare were used with increasing sophistication during the two World Wars [21] and are generally considered to be legitimate exercises of sovereignty, not contrary to international law.[22] During World War II, the U.S. Government maintained extensive domestic and international economic controls.

By the time the Export Control Act was passed in 1949, foreign policy, not war, became the prime reason for trade restrictions. This act and its successor, the Export Administration Act, established a peacetime system of export licensing to prevent the Soviet Union and other Communist countries from obtaining strategic commodities. The system has also been used to control the export of commodities in short supply on the U.S. market. In addition, the Trading With the Enemy Act of 1917 [23] was used by the Treasury Department to issue regulations embargoing imports from certain Communist countries as well as controlling the export of strategic materials by the foreign affiliates and subsidiaries of U.S. firms, including the assembly abroad and reexport of U.S. components.

Through use of a third law, the Mutual Defense Assistance Control Act of 1951—commonly known as the Battle Act [24]—the United States sought to press its objectives on recipients of U.S. foreign assistance by requiring the suspension of all military, economic, and financial aid to countries shipping armaments, nuclear materials, and other strategic materials to nations threatening the security of the United States.

Finally, the Federal Maritime Administration maintains a list of vessels, currently numbering 203, calling at Cuban and Vietnamese ports to deny these ships the right to carry U.S.-financed cargo and, up until late 1975, to refuel at U.S. ports.[25] The boycott of vessels doing business with Cuba, for example, began in the early 1960's for the purpose of discouraging trade with Cuba.[26]

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[21] M. S. McDougal and F. P. Feliciana, *Law and Minimum World Order* (1961) at p. 30.
[22] W. W. Bishop, Jr., *International Law* (3d ed., 1971), at pp. 1033–1034 (ft. note 232).
[23] 12 U.S.C. 95a, 50 U.S.C. App. 5(b).
[24] 22 U.S.C. 1611–1613d.
[25] Report No. 128, Federal Maritime Administration, Sept. 23, 1975.
[26] Ibid.

This sampling of U.S. controls depicts substantial U.S. peacetime international trade controls aimed at achieving foreign policy goals. However, at no time in modern history has any country or group of countries sought to impose or enforce or tertiary boycotts as is the case in the Arab boycott against Israel.[27] The United States, for example, has not required other countries to boycott Cuba as a condition for being able to do business with the United States.

EVOLUTION OF THE ARAB BOYCOTT

Throughout the 1930's and the 1940's, the dispute between the Palestinian Arabs and the Palestinian Jews over the question of Jewish statehood became increasingly polarized, and the Arab boycott began to grow.[28] In October 1945, only a few months after its founding, the Arab League formalized the existing boycott by Palestinian Arabs against goods produced by Palestinian Jews and enlisted the participation of all Arab States.

In April 1950, after prolonged discussion of feasibility, the boycott was extended further to include the boycott of supporters of Israel, that is, the secondary and tertiary boycotts. Finally, in March 1951, the Arab League established a boycott office to coordinate the boycott actions of league members. The formalized Arab boycott has thus been in existence for over 25 years.[29]

The rationale for the boycott as an aspect of the ongoing state of belligerency and the consistency of Arab support for the boycott has apparently changed little. The boycott's impact, has, however, changed substantially in recent years. This change is a direct result of the fivefold rise in the price of oil which followed the Arab-Israeli war of October 1973. Due to the normal timelags in oil payments, massive accumulation of oil revenues did not begin until 1974. That year, the combined current account surplus of the OPEC nations,[30] which includes several major non-Arab oil producing countries, was $62 billion.[31] The recent concern in the United States over the boycott did not arise over its impact on trade. Rather it was first noted in the investment banking sector. One source suggests that the Arab boycott may have started to work in the financial community as far back as March 1974.[32]

In early February 1975, Lazard Fréres, a leading French investment firm, protested to the French Government its exclusion by a nationalized French bank, Credit Lyonnais, from the underwriting of two major bond issues for state-owned corporations, including Air France.

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[27] For a history of recent international economic controls, see "Sauce for the Gander" by Andreas F. Lowenfield, a paper delivered at the "Conference on Transnational Economic Boycotts and Coercion," Feb. 19–20, 1976, at the University of Texas School of Law, Houston, Tex.

[28] Ibid.

[29] Ibid.

[30] OPEC (Organization of Petroleum Exporting Countries) includes: Algeria, Ecuador, Gabon, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates, and Venezuela.

[31] These figures and those immediately following are taken from Morgan Guaranty Trust Co., "World Financial Markets," Jan. 21, 1976, pp. 6–8. Morgan's figures are somewhat higher than those of the U.S. Department of the Treasury which placed the OPEC surplus at $41 billion in 1975.

[32] "The Economist," Feb. 15, 1975, p. 82.

The exclusion was allegedly based on the firm's alliances with Israel. Several days later, the Kuwait International Investment Co. attempted to pressure Merrill Lynch, Pierce, Fenner & Smith into excluding boycotted Jewish banks from participation in the underwriting of two bond issues in the United States—one for Volvo, the Swedish automobile manufacturer, and one for the Government of Mexico. Merrill Lynch refused to cooperate, the Kuwait International Investment Co. withdrew as comanager, and the bond issues went ahead.

CONGRESSIONAL CONCERNS

Congressional response to the ramifications of the Arab boycott began as far back as 1965. The issue was explored during hearings by the House Committee on Banking and Currency, Subcommittee on International Trade, to extend or amend the Export Control Act.[33] An examination of the committee hearings and the related House and Senate reports suggests that there has been little change in the arguments raised by the various participants in the controversy in the nearly 11 years since those hearings were held.

Testimony by Irving Jay Fain at the House hearings, representing the American-Israel Public Affairs Committee, offered a concise statement of the reasons for opposing the boycott. In addition to outlining the objectionable nature and impact of Arab questions concerning the religious affiliation of owners and employees of American business, Mr. Fain detailed other effects of the boycott on American business as follows:

1. The U.S. businessman is involved in the Arabs dispute with Israel even though he may not wish to be involved, or even though he may oppose such boycott activities.
2. The U.S. businessman is being put in the position of being blackmailed to give up his Israeli business under fear of losing his business with Arab countries.
3. The U.S. businessman is required to supply affidavits which have no pertinence to the business aspects of the transactions.
4. The shipping lines are required to run double routes to the Middle East.[34]

Mr. Fain concluded:

The United States cannot avoid involvement. Inaction by the United States become an act of omission, which permits the boycott activities to continue, thus becomes positive involvement in support of the boycott. This is a case where silence gives assent. The United States must make a decision. The United States must decide whether it will protect its businessmen from the boycott or leave them exposed.[35]

Failure to address the boycott problem was viewed by Mr. Fain and other witnesses as acceptance of the boycott with all its undesirable domestic and international ramifications.

Assistant Secretary Douglas MacArthur II, representing the Department of State, at the House hearings in 1965 testified that some bills under consideration prohibiting the furnishing of information and the signing of agreements in compliance with Arab boycott terms would have the following effects:

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[33] U.S. Congress, House Committee on Banking and Currency, Subcommittee on International Trade, "Continuation of Authority for Regulation of Exports and Amending the Export Control Act," Washington, D.C., U.S. Government Printing Office, 1965. (Hereinafter referred to as House hearings.) Hearings held May 5, 13, 20, and 21, 1965.

[34] House hearings, p. 199.

[35] House hearings, p. 204.

1. Prevent American firms, some of which trade with both Israeli and Arab companies, from trading with the Arabs.
2. Seriously harm our sizable commercial relations with Kuwait and Saudi Arabia, with adverse effect on our already negative balance of international transactions.
3. End cooperation with the United States by several Arab States which have recently been very cooperative on boycott actions.
4. Prohibit actions which we ourselves must practice in enforcing U.S. legislation regarding trade with Cuba by other countries. Our vulnerability to hostile propaganda would be increased thereby.[36]

Assistant Secretary MacArthur's fourth point—that U.S. restriction of tra with the Communist world would be seriously hampered by passage of antiboycott legislation—emerged repeatedly as a major reason for avoiding action on the Arab boycott. For example, Acting Secretary of State George W. Ball at the House hearings testified 10 years ago:

The central problem we foresee in it, I suggest, is the impact it would have on the kind of cooperation we are receiving in the enforcement of our own economic denial programs . . . no economic denial program is ever popular in the world trading community, and for quite valid reasons because they do interfere with free commerce. And consequently, we have had to expend a great deal of diplomatic effort in trying to persuade other countries to encourage their own industries to help us out, to be cooperative with us, because the kind of sanctions that we can apply to foreign countries, as you can understand, are indirect and very difficult to apply.

What we fear from this legislation, and I think very legitimately fear from it, is that this would provide the basis for other nations with quite clear conscience looking at the example of the United States to enact this kind of legislation which would tend to be highly popular with their own industrial communities. The consequences would be that we would find ourselves with our sources of information and of assistance dried up, and in a very difficult position indeed so far as the effective carrying out of these programs which we regard as of considerable importance in continuing the isolation of Cuba and preventing it from a greater source of Communist infection in the Western Hemisphere.[37]

For this and other reasons, the Department of Commerce also opposed passage of the legislation. Robert E. Giles, General Counsel for the Department of Commerce at the same House subcommittee hearings, testified:

It seems to us that the administration of the basic policy objectives in the Export Control Act could be adversely affected by the enactment of the bill, that the bill would not be useful in bringing to an end the boycott, and that it would have undesriable side effects for American business.[38]

The Commerce Department also feared that if American business were forbidden to answer boycott questionnaires, the Arabs would resort to using information which was garnered from substantially less reliable sources. Moreover, in the words of Mr. Giles:

It has been suggested that American businessmen would be happy to have legislation such as this enacted to bolster them in their resistance to the boycott. However, while proponents of this legislation indicate that there are over 1,500 firms listed on the Arab blacklist, we are not aware of any strong business demand for passage of this legislation.[39]

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[36] Letter to Hon. Wright Patman from Assistant Secretary of State Douglas MacArthur II. House hearings, p. 38.
[37] Testimony of George W. Ball. House hearings, p. 61.
[38] Testimony of Robert E. Giles. House hearings, p. 83.
[39] Ibid.

There undoubtedly existed, at the time, aspects of the boycott that were injurious, particularly to companies on the boycott list, as was claimed in James A. Gallagher's prepared statement delivered at the 1965 hearings on behalf of Merritt-Chapman & Scott Corp., a company which lost business in the Arab world because of its ties to an Israeli firm.[40] But despite such cases there was only limited support by the business community for the then pending legislation.

Major factors in this drive for antiboycott legislation were concerns about religious discrimination and U.S. support for Israel as well as the concern that foreign concerns should not be allowed to dictate American business practices. There was a repeated emphasis during the hearings on the offensiveness of questions concerning religious affiliation contained in Arab boycott questionnaires as well as by the "Supplemental Views" contained in the report of the House Committee on Banking and Currency which characterize as "intolerable" the situation in which:

> [A]n American employer or an American firm is prohibited by law from asking what ones' religion is, what his race is, what his place of origin may be or that of his ancestors. Despite such prohibitions in existing law, the practices of the State Department and the Commerce Department give permission, if not direction, to Americans to answer to foreigners the very questions which they are prohibited from asking or of answering to other Americans.[41]

Despite the saliency of the religious issue, there was no testimony by representatives of the Justice Department on the civil rights issue. Antitrust implications were not discussed either. Other points cited in the "Supplemental Views" in support of a statutory ban on the provision of information in response to the boycott included recognition that the Departments of State and Commerce were reluctant to carry out the intent of such an antiboycott amendment, and that a prohibition would help smaller firms, which have less leverage to deal more effectively with the boycott. The "Supplemental Views" to the House report were signed by 17 members of the committee, a majority.[42] The report of the House Committee on Banking and Currency recognized the complexity of the isues raised by the boycott.

> A sharp conflict of the competing policy considerations confronted your committee with one of its most delicate assignments in recent memory. After painstaking deliberation, your committee reached what it believes to be a sound and workable resolution, and urges its thoughtful consideration and ultimate adoption by the House. . . .[43]
>
> Those on either side of this controversy should be mindful that considerably less palatable alternatives exist than that which your committee hereby reports and earnestly recommends.[44]

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[40] Testimony of James A. Gallagher; prepared statement by Miles C. McGough, House hearings, pp. 218–220.

[41] U.S. Congress. House Committee on Banking and Currency. Extension of the Export Control Act. Washington, D.C., U.S. Government Printing Office, 1965, p. 14. Report No. 434.

[42] The 17 members signing the "Supplemental Views" were: Abraham J. Multer, Democrat, New York; William D. Barrett, Democrat, Pennsylvania; Henry S. Reuss, Democrat, Wisconsin; Fernand St Germain, Democrat, Rhode Island; Henry B. Gonzalez, Democrat, Texas; Joseph G. Minish, Democrat, New Jersey; Bernard F. Grabowski, Democrat, Connecticut; Richard L. Ottinger, Democrat, New York; William B. Widnall, Republican, New Jersey; Paul A. Fino, Republican, New York; Florence P. Dwyer, Republican, New Jersey; Seymour Halpern, Republican, New York; James Harvey, Republican, Michigan; W. E. (Bill) Brock, Republican, Tennessee; Del Clawson, Republican, California; Albert W. Johnson, Republican, Pennsylvania; and J. William Stanton, Republican, Ohio.

[43] House report, p. 2.

[44] Ibid., p. 3.

The committee stated that it should be the policy of the United States to oppose and discourage restictive trade practices and boycotts against nations friendly to the United States. In order to implement that policy, the Committee urged that the President be given the power to curtail exports or remove export licenses. It also recommended that the Commerce Department collect reports from every exporter who receives a request to participate in a foreign imposed boycott. The Congress enacted both measures. The House Report said these measures "will furnish the Administrator with clear legal authority to protect American business from competitive pressure to become involved in foreign trade conspiracies against countries friendly to the United States." [45]

Measures to prohibit American business from furnishing information or signing agreements in furtherance of foreign-imposed boycotts were rejected by the Committee and later on the floor of the House when it was offered as an amendment. The reason, given in the Committee report, for not proposing stronger measures was the need to give the President the flexibility as well as the authority and not "tie the hands of the administration" in dealing with boycott practices." [46]

SUBCOMMITTEE HEARINGS

The hearing held by the Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, on September 22, 1975, focused not only on Secretary Morton's refusal to provide the subpenaed documents but also considered the Commerce Department's efforts to implement the antiboycott provisions of the Export Administration Act. It was an opportunity for Secretary Morton and subcommittee members to exchange views, and to learn what has or has not been done by the Commerce Department to fully implement the spirit and letter of the antiboycott laws.[47]

. . . Secretary Morton commented about the "exporters of so-called Arab boycott requests" and what information he said they provide:

I should explain that the term "boycott request" is somewhat misleading. In many instances, what is involved is a request for information concerning the extent of the firms' involvement in certain commercial relations with the State of Israel, rather than a request that the U.S. firm boycott Israel.

In virtually all transactions with most Arab countries, United States and other foreign firms are required to provide boycott-related information or certifications as a condition for completing the transaction. These requirements take various forms. Firms bidding on specific contracts—government or private—or those newly entering Arab markets, may be asked to answer questionnaires or to execute affidavits concerning the extent of their business relations with Israel.

In the case of straight export sales, which constitute the majority of transactions with Arab countries, the requirement usually arises at the time of shipment. The exporter, as a condition of receiving payment, typically is required to certify that the goods are not of Israeli origin or the products of firms boycotted by Arab nations, or that the shipping line and/or insurance company is not boycotted.

Failure on the part of the exporter to provide the requested information or certification will usually result in the loss of the contract or sale. However, the fact that a U.S. exporter trades with Arab countries does not necessarily mean that it has boycotted Israel. There may be little or no market in Israel for the

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[45] *Ibid.*, p. 1.
[46] *Ibid.*, p. 5.
[47] Subcommittee hearings, pp. 1–47.

firm's goods or services. The firm may not be able to compete economically with other suppliers in that market, or any one of a variety of other business judgments may explain negative responses to the Arab questionnaires.

In fact, a U.S. firm trading with Arab countries may very well be trading with Israel as well, since the Arab boycott list does not extend to U.S. firms engaging in routine trade with Israel.[48]

The Export Administration Act and implementing regulations require U.S. exporters to report to the Department of Commerce the receipt of boycott-related requests. The reports describe the type equest received, the country from which it originated, the name and address o. the party making such request, the details of the transactions or trade opportunity in connection with which the request was made—including a description of the commodities or services involved and other specific commercial data such as quantities and prices, when available.[49]

Secretary Morton defended the Department's enforcement of the Export Administration Act's antiboycott provisions. He said, "We are clearly on record in fully supporting [them]." Secretary Morton also said:

. . . the mere fact that a U.S. company is identified as trading with a particular country could subject that company to domestic pressures and economic reprisals. This may occur, even though such trade may be perfectly legal.[50]

At that point, Representative Scheuer and Secretary Morton had the following exchange:

Mr. SCHEUER. Mr. Secretary, you say that trading with the Arab countries and conforming to their requirements of providing information and perhaps refusing to deal with another American company doing business with Israel is legal. It may or may not be legal under our antitrust laws, but assuming it is legal, isn't it contrary to the clear public policy of the United States? Isn't it contrary to the urgings of our State Department and the Commerce Department that American companies not acquiesce to the Arab boycott? If it is clearly contrary to your instructions to them and to Presidential policy, State Department policy, and the policy of the Congress, then if they insist on flagrantly violating the declared public policy of this country even though it may be legal to do so why are they entitled to a cloak of secrecy in making the choice to cave into the boycott threats and flout our national policy? Under present law they have the right to make that choice, perhaps, but why don't their stockholders have a right to know of their choice? Why don't their customers have the right to know that? Why don't the consumers of America have the right to know of that choice and why doesn't the Congress of the United States have a right to know of that choice?

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Secretary MORTON. In answer to the Congressman's question, I think there is a lot of confusion about the extent to which these reports reflect cooperation with and participation in a boycott. Various sources have labeled these reports as a list of firms boycotting Israel, firms capitulating or surrendering to commercial blackmail, and I think these labels are for the most part inaccurate, as I note in my statement.

The fact that a firm reports the receipt of a boycott request or even responds to it does not necessarily indicate cooperation with the actual boycott. The factors such as market condition in Israel, foreign competition, and other things may

[48] It is not clear what the Secretary meant by the assertion that the Arab boycott list does not extend to U.S. firms engaging "in routine trade with Israel." The Arab boycott list includes Topps Chewing Gum which licenses the production in Israel of Bazooka Bubble Gum, complete with baseball cards. Meyer Parking System, Inc., which operates only in the United States, is also boycotted although it has no trade, routine or otherwise with Israel. The subcommittee's examination of the boycott reports indicates a wide range of commodities has been affected by the boycott including products that would have little to do with any country's ability to wage war, such as tobacco products, liquor, Christmas cards, and children's bikini sets, which were actual examples.

[49] Subcommittee hearings, p. 7.

[50] *Ibid.*, p. 8.

dictate that the firm's market is in the Arab countries and not in Israel, or firms may be trading with both Israel and Arab countries since the boycott does not preclude routine civilian trade with Israel. I do not believe that such a U.S. firm should be subjected to the risk of domestic sanctions for obeying the law and reporting boycott requests, particularly since it is lawful to trade with the Arab countries even where requests are involved.[51]

Commerce Department Says Boycotting is Not Prohibited

Representative Scheuer cited the declaration appearing at the top of each reporting form used by the Department and said that it was ineffective in deterring boycott practices. The legend on the form stated:

> Important: It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies or information are encouraged and requested to refuse to take, *but are not legally prohibited from taking*, any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting such restrictive trade practices or boycotts.[52] [Emphasis added.]

Representative Scheuer said it was inconsistent with the public policy to tell firms that they are "not legally prohibited" when such practices may be prohibited by antitrust and other laws: "When you tell them your request isn't legally binding, isn't that sort of winking at them, and signaling them that you don't really mean it?"[53] The Secretary changed Department regulations to remove the "not legally prohibited" language from its reporting form on October 1, 1975.

Commerce Department Distributes Boycott Invitations

Representative Toby Moffett raised the issue of the Department's circulation to American businesses of trade opportunities that contain boycott clauses. Trade opportunities are offers to do business from foreign concerns who are, for example, building a factory and are looking for a contractor to do the work according to specifications. The Department circulates the trade opportunities in this country in order to stimulate exports. But the point raised by Representative Moffett and other subcommittee members was that distributing trade opportunities with boycott clauses serves to further boycotts. ". . . I think the issue of our Government assisting in this boycott is really wrong," stated Representative Moffett.[54] Representative Henry Waxman made the same point:

> . . . to say that you are not sympathetic to the boycott is all fine and good, but the effect of all this is to say we are going to wink at those who want to have a boycott, we don't like it but what can we do, we cannot change the world.
>
> Let me just tell you, Mr. Secretary, that what we are going to have is a clear signal to escalate a boycott not just against Israeli-made goods or services or against businesses that have some affiliation with Jews, but we are going to find it being applied to Catholics and others. We are going to find it applied to other minorities later because there is no way to draw the line then unless we draw it at the very beginning.[55]

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[51] Subcommittee hearings, pp. 8-9.
[52] Subcommittee hearings, p. 21.
[53] *Ibid.*, p. 22.
[54] Ibid., p. 26.
[55] Ibid., p. 31.

Representative Richard Ottinger raised similar objections:

> The policy the administration is pursuing which is also the policy which the previous administrations have pursued clearly implicates the U.S. Government in the boycott. It seems to me if our policy is needed to oppose such practices that it is completely within the purview of the Department of Commerce to refuse to circulate any document that contains boycott instructions in it.[56]

Associate General Counsel for the Department, Richard Hull, responded to Representative Ottinger with the Department's rationale for this practice. Mr. Hull said:

> If we were to play ostrich, so to speak, and turn the other way and refuse to accept these trade opportunities and let the firm try to get trade opportunities through sources from abroad, we would be in a situation where we would in many instances effectively prevent the firm from trading with Arab countries, although the firm is not prohibited from trading with these countries.[57]

Secretary Morton said that the Department, in response to similar criticism, was placing rubber stamps on the trade invitation documents to state that it was against U.S. policy to comply with foreign-imposed restrictive trade practices. According to internal Department memoranda,[58] the procedure of stamping the boycott document with the U.S. policy statement was established not because it was perceived as wrong or as a contradiction with U.S. policy but was done in order "to defuse the situation [the criticism]." [59] Following the subcommittee's hearing the Department changed its policy on December 1, 1975 to provide that neither the Commerce Department nor the State Department will circulate trade opportunities containing boycott clauses.

Compliance Question Ignored

A third issue raised at the hearing concerned the Department's failure to require companies to answer the question concerning what action the company took in response to the boycott request. For 10 years, the Department stated on its exporters' report form that a response "would be helpful to the U.S. Government but is not mandatory." [60] Accordingly, most companies chose not to answer that question which is critical to determining the impact of the boycott practices.

Representative Scheuer told Secretary Morton that it is an "abuse of your discretion not to ask companies * * * whether they intend to comply with the boycott." [61] Secretary Morton replied, "There is some legal question as to whether we have the authority to [require an answer to the compliance question]." [62] But 3 days later, the Secretary wrote to Chairman Moss, stating that as the result of the points raised at the hearing, he had given the subject further thought and decided to make answers to that question mandatory.[63] The regulation making this question mandatory became effective on October 1, 1975.

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[56] Ibid., p. 40.
[57] Ibid.
[58] See app. B, p. 67.
[59] Ibid.
[60] Subcommittee hearings, p. 41.
[61] Ibid.
[62] See subcommittee hearings, p. 41.
[63] Subcommittee hearings, Secretary Morton's letter at p. 180.

CHAPTER III.—SCOPE AND METHODOLOGY OF THE INVESTIGATION

The subcommittee sought and received information from Federal and State government officials, foreign embassies, the academic community, and the private sector. However, the reports filed with the Department of Commerce by U.S. exporters under the Export Administration Act were the primary source of information for this study.

On December 8, 1975, the subcommittee received approximately 12,000 Export Administration Act report documents covering a filing period of just over 5 years, from July 1, 1970 to December 5, 1975. An additional set of approximately 9,000 report documents was later received to complete the month of December 1975. To determine the rate of corporate compliance with boycott requests and the amount of trade pursuant to Arab boycott regulations, the subcommittee calculated data from reports filed in 1974 and 1975.

The subcommittee staff reviewed all reports filed during the six-year period. Approximately two dozen items of data from each report were computerized for reports filed throughout 1974 and up to December 5, 1975.[64] The volume of reports filed in December was too great to permit extracting all of the data available on each form within the time available. The large number of reports filed in December 1975 can probably be attributed to increased publicity about the Arab trade boycott, congressional concerns about the boycott and the subcommittee's contempt proceedings against Secretary Morton, as well as a Commerce Department regulation which went into effect December 1, 1975, requiring that boycott reports be filed by banks, insurance companies, and freight forwarders. Previously, only exporters had been required to report the receipt of boycott requests.

In view of the large number of documents filed in December 1975, the subcommittee staff used a scientifically constructed probability sample to make estimates on the rate of compliance and the amount of sales subject to boycott requests for that month.[65] To allow for a consistent comparison of data, reports filed by exporters in December 1975 were separated from those filed by the service organizations for evaluation.

The basic Commerce Department form used by exporters to report boycott requests is entitled "U.S. Exporter's Report of Request Received for Information, Certification, or Other Action Indicating a Restrictive Trade Practice or Boycott Against a Foreign Country." [66]

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[64] Information from the reports was transcribed onto coding sheets and then entered into a computer storage bank. Computerization facilitated analysis and retrieval of the data.

[65] See app. C at p. 70 for a report detailing the sampling process and verification procedures used in this audit. The report was prepared for the subcommittee by the Congressional Research Service of the Library of Congress.

[66] See appendix D at page 76 for a copy of the reporting form.

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The form contains 11 items of information concerning the request received by the exporter to participate in a foreign-imposed boycott. Each item of information was processed by the subcommittee. Each report described one or more sales. When a report showed more than one requesting country, more than one commodity, or more than one dollar value, it was necessary to make separate computer entries to describe the multiple transactions.

The commodities exported were recorded using a commodity table consisting of a three-digit code. A table was developed to correlate the commodity categories with industry classifications. This second table provided a guide as to the types of U.S. industries subjected to boycott requests.

Another data classification was used for the type of industry engaged in by the foreign importers. This identification originated from data describing the commodity and the name of the importer. For example, for a report showing that the ABC Oil Co. bought oil drilling equipment it was asssumed that the importer was engaged in the petroleum production industry. This classification system was used as a guide to economic data.

The classification was as follows: (1) Social services, education, and health; (2) petroleum production; (3) manufacturing or construction; (4) consumer goods and services; (5) public utilities, including electricity, water, sanitation, transportation, and communications; and (6) industries not covered above or not easily ascertainable.

In all other cases, the information on the reports, such as the name of the exporter, boycotted country, and requester, was recorded exactly as indicated on the report itself or in the attachments which were submitted with the report by some of the exporters.

One of the items on the form asked exporters to specify the type of "request" received. Actually, the items specified in this space were not requests, but types of documents used to convey requests. In analyzing the data the Commerce Department breakdown was consolidated into four categories. These categories of documents were as follows:

S—any type of sales document, purchase order, certificate of origins, certificate of manufacture;

T—trade opportunity, bid specification, or request for quotation;

Q—questionnaire;

C—correspondence other than Q, T, or S, above, or documents not readily identifiable by analysts.

A sales document can be either a letter of credit, purchase order, invoice, certificate of origin, certificate of manufacture, or contract. It relates to one sale or set of sales. A trade opportunity is, in effect, an offer to do business where, for example, a railroad company in Saudi Arabia advertises its interest in purchasing railroad cars meeting certain construction specifications and from a manufacturer willing to sell pursuant to certain contractual terms. Several exporters or contractors can receive and respond to the same trade opportunity, while only one can actually receive the sale or contract.

Questionnaires are sent by foreign concerns to American companies which may or may not be doing business with the requestor. Question-

naires often originate from the Arab League's boycott office and include questions designed to determine the relationship of the exporters to Israel or business interests in Israel, or in some instances, whether the exporting companies have Jews or persons with "Zionist tendencies" on the corporate board of directors or as corporate officers. Questionnaires were almost always received in the context of one of two situations: (1) In response to a firm's effort to discover why it was blacklisted or how it could get off the list, or (2) as an apparent prerequisite to renewing patents or trademarks in certain Arab countries.

The actual boycott requests were clauses contained in the trade documents. A space was provided on the reporting form for firms to write in the language of the actual request. Often there were several clauses contained in a given trade document. Many companies filed copies of the documents containing the boycott clauses with the report. For purposes of analysis, the various clauses were categorized into seven groups. Each group is discussed in detail in chapter IV, at page 32.

CHAPTER IV.—FINDINGS AND ANALYSIS

ANTI-BOYCOTT PROVISIONS OF EXPORT ADMINISTRATION ACT

The Export Administration Act reports provide the only comprehensive data base on restrictive trade practices imposed by foreign concerns on American business. The anti-boycott provisions of the act is the only Federal law created in direct response to these practices. Therefore, the subcommittee examined the Commerce Department's administration of these anti-boycott measures in the process of considering whether new law is needed to protect American business from foreign imposed restrictive trade practices and to insure that investors have the information about thesee practices they need for making investment decisions.

The antiboycott provisions of the Export Administration Act have three basic elements. First, they provide a statement that it is U.S. policy to oppose having foreign concerns use American business as a tool of economic warfare against a country friendly to the United States [67] and to encourage domestic concerns to refuse to take any action in furthering those practices, includiing the furnishing of information or the signing of agreements.[68] Second, the act states that the President or his designate "shall require that all domestic concerns receiving requests for the furnishing of information or the signing of agreements" related to the furtherance of restrictive trade practices imposed by foreign concerns "must report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes" of the antiboycott provisions of the act.[69] Third, certain powers and duties to "prohibit or curtail" exports are granted to the President under the act in order to "effectuate the policies set forth" in the act.[70]

"All Domestic Concerns" Did Not Report

Contrary to the clear mandate of the Export Administration Act to require all domestic concerns to file boycott reports, the Department of Commerce promulgated very narrow reporting requirements that covered only U.S. "exporters," up to December 1, 1975. On that date, the Department issued new regulations to require freight forwarders, banks, and insurance companies to also file reports.

Freight forwarders are often retained to handle the work of actually exporting the goods produced by the exporter—that is, to procure the transporter and file the necessary documents needed for insurance and local importing regulations. Thus, freight forwarders, in lieu of ex-

[67] 50 U.S.C. App. 2402(5)(A).
[68] 50 U.S.C. App. 2402(5)(B).
[69] 50 U.S.C. App. 2403(b)(1).
[70] 50 U.S.C. 2403(b).

porters, frequently have received and processed certifications needed for exporting goods to Arab countries in accordance with the Arab boycott rules. Likewise, letters of credit are often processed in a similar fashion by banks on behalf of an exporter. Therefore, exporters were in a position to rationalize that they did not have to report boycott requests received by service organizations, albeit on their behalf. Commerce Department personnel knew or should have known that previous boycott reporting regulations would exclude a large number of boycott requests by virtue of being directed solely at exporters.

Apparent Loopholes

Numerous business concerns may have exploited the Department's loosely worded regulations. In fact, a conference,[71] in March 1976 was held so that corporate officials could not only learn more about present and proposed boycott laws, but to discuss various ways to escape the reporting mandate contained in the Export Administration Act. Representatives of the Department of Commerce, were present and provided at least tacit approval for some of the avoidance techniques discussed. Representatives of the Departments of State and Treasury were also presented at the conference.

The Commerce Department representative expressed the view that "the regulations say only that the U.S. exporter must report receipt of a boycott request," according to a memorandum about the conference which was prepared by the sponsoring corporation.[72] The exporters were advised that if a U.S. company's foreign affiliate receives a boycott request, without the actual knowledge of the parent company, then "the U.S. parent is not expected to report the request to the Commerce Department.[73] The memorandum goes on to advise:

> Theoretically, this means that U.S. companies trading with Arab nations could set up Middle Eastern trading companies (in Europe, for example) that do not report boycott requests back to the parent. However, the Commerce Department representative also pointed out that this would come close to evasion, if not avoidance, of the intention of the Export Administration Act. It might also prompt legislative action from Congress.
>
> On the other hand, the Commerce Department representative said without equivocation that the reporting requirement is tied to an "export transaction," so that if a company encounters the boycott while examining a deal that does not materialize, it does not need to be reported.
>
> * * * * * * *
>
> During the corporate interchange, several companies noted that a distinction should be made between complying with a boycott questionnaire and the boycott itself. In many instances a company *can* answer certain questions or certify documents without running afoul of U.S. laws on discriminatory practices. In other instances, companies routinely answer questionnaires and certify documents pro forma. Revealing such practices, many companies feel, could expose them to action by anti-boycott groups like the AJC (American Jewish Congress).

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[71] The conference was sponsored by the Business International Corp., for clients of its "Executive Services." The meeting, called the Business International Roundtable on the Arab Boycott, was held in Washington, D.C., on Mar. 25, 1976.

[72] Mr. Robert S. Wright, vice president and general manager, Western Hemisphere, Business International Corp., prepared a memorandum to summarize the conclusions of the BIC Arab boycott roundtable for its corporate clients. A copy of this report is provided in app. E at page 77.

[73] Ibid.

One of the primary concerns about the reporting requirements expressed by exporters at the conference concerned the definition of "compliance" with the boycott—the term usually applied to a company's response to the importers' boycott requested.[74] The memorandum states:

> Does merely answering the boycott request—no matter what the answer is—constitute compliance? Commerce Department representatives at the roundtable indicated they did not believe this to be so. Thus, in reporting a boycott request, companies should be careful to distinguish between merely answering a boycott request and actively complying with a boycott request. This is easy to do, since the regulations allow companies to report by letter instead of the standard reporting form, if they so desire.[75]

Companies are in fact permitted to ignore the reporting form and write their report on any piece of paper. This procedure makes it all but impossible for the Department to employ any kind of efficient system for collecting, analyzing, and retrieving useful data obtained from the reports. A more effective way to resolve the concerns expressed by exporters would be for the Commerce Department to provide a reporting form and corresponding regulations that are unambiguous.

Vague Reporting Requirements

The Commerce Department's failure to fully administer the reporting mandate of the act was largely a failure to explain fully and unambiguously what information was to be reported, to effectively administer the reporting requirement, and to use the data fully. These deficiencies are discussed in a report prepared for the subcommittee by infomation specialists for the Congressional Research Service contained in the appendix.[76] Some of these problems are examined here.

The Commerce Department's regulations and its corresponding reporting form called upon exporters to report "a request to take any action, including the furnishing of information or the signing of an agreement, that would further or support a restrictive trade practice or boycott fostered or imposed by a foreign country."[77] It is not clear who decides what kind of action "would further or support a restrictive trade practice." Arguably, a firm could decide that its activities did not further a foreign imposed boycot and accordingly not report their activities to the Department. The language of the regulation, as previously indicated, caused business persons to be concerned about how their conduct was going to be viewed: Did the company actively comply with the Arab boycott by refusing to trade with Israel? Or, did the firm comply by responding to a request to provide factual information, as many exporters contend they did without altering the company's relations with Israel.

There is some understandable confusion as to what it means for a firm to state that it complied with a questionnaire received from an Arab country without stating how they answered it. This ambiguity is illustrated by those cases where firms provided copies of the

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[74] Ibid.
[75] Ibid.
[76] See app. F.
[77] 15 C.F.R. 369.4.

questionnaires with their reports to the Commerce Department. Several of these firms answered factual questions, such as describing what business interests they do or do not have in Israel. Some of the same firms also indicated to the foreign concerns that they could not, for reasons of corporate policy, answer questions concerning the national origin or religious affiliation of its employees or whether they had made contributions to Israel. However, the Commerce Department reporting system does not make distinctions between an exporter's answers to a questionnaire, but merely seeks to find out whether the firm did or did not return it to the foreign concern.

Confusion also arises from the fact that in many of the cases reported to the Department, there was no actual "request" in the sense of a specific act of asking for something to be given or done. To discover import laws, exporters often consult Dun & Bradstreet's Exporter's Encyclopedia or Brandon's Shipper and Forwarder, which list the customs requirements of most importing countries. These customs laws would, for Arab League countries, include "boycott" requirements such as certificates of origin. Some firms, less than a dozen, indicated that they learned of boycott requirements through such sources. But since these sources are routinely used by exporters, it would appear that a substantial number of firms are not reporting their compliance with these rules because they arguably are not "requests." Commerce Department regulations could be issued to resolve this problem.

Most Data Not Used

The Commerce Department also failed to make full use, and in many instances made no use, of the data collected from exporters. The Department, for example, made no attempt to regularly calculate the economic impact of the boycott on domestic commerce. In fact, the Department totaled up the dollar values of boycotted-affected transactions on only one occasion. That was on June 25, 1975 [78] when the Department completed a special report that was used by the Senate Committee on Banking, Currency and Urban Affairs. Even then, the data was hurriedly gathered in a crude fashion that substantially understated the dollar value of boycott affected transactions.

The understatement occurred because most of the boycott affected transactions for 1974 took place in the last part of the year. In terms of sales dollars, most reports were filed by the exporters in December, 1974, but apparently were not received or processed by the Commerce Department until the first part of 1975. The Department grouped the reports according to the year in which they were received. This method produced substantial distortions in the dollar value of "boycott affected transactions" reported by the Department in that July 1975 report. For 1974, for example, the Department's special report stated that there was $9,948,578 worth of "reported boycott-affected transactions." Adding up the dollar value of boycott-affected transactions from the subpoenaed reports, the Subcommittee found that the value of boycott requests filed in 1974 with the Department totals $19,995,719. The subcommittee learned that by adding the values accord-

[78] On that date, the former Under Secretary of Commerce, John K. Tabor, presented the report to Senator Harrison A. Williams, Jr., which was prepared at his request.

ing to the data in which the boycott requests were reported as received by the exporters resulted in a total of $145,355,113. The value of transactions subject to boycott requests reported as having been received in 1975 rose dramatically to $4,402,333,887.

Computerization by the subcommittee permitted sorting data according to the dates in which the boycott requests were received by the firms or by the dates cited by exporters as when they filed the reports with the Commerce Department. Compiling data according to request dates would enable the Department to gain more accurate information as to the extent boycott activity is increasing or declining during any given time period.

Instead of measuring boycott activity by dollars, the Department dutifully reported four times a year to Congress over an 11-year period the number of boycott affected "transactions." This proved to be all but meaningless. Although "transactions" were defined by Department officials as shipments, the subcommittee learned from exporters as well as Commerce Department personnel that "transactions" meant whatever an exporter meant it to be.[79] Different exporters defined the term differently. But assuming that "transactions" was defined by all exporters as shipments it would still be of little value since a shipment may involve a sale of pencils or a shipload of wheat.

Data Often Inaccurate

One area of confusion on the form was in determining whether the Department was asking for the name of the country being boycotted or the country from which the boycott request was initiated. The form provided one space for the name of the country being boycotted and another space for the boycotting country.[80] But the language used on the Commerce Department reporting form was unclear and confusing. As a result 10.7 percent of all reporting firms examined reported the improbable situation of the boycotting country as being the same as the boycotted country; i.e. Iraq boycotting Iraq. This type of problem could have been avoided with instructions for completing the form that were more complete and clear.

Another item of information requested on the form was for "the specific information or action requested [using] direct quotations from the request [document]." This question is essential for determining what American businesses are being asked to do. However, the space allowed for answering this question was two-single spaced typewritten lines. This was inadequate since most boycott clauses would take up several typewritten lines and most documents contained several clauses. As a result, most companies quoted only one of several boycott clauses, attached the entire document containing the clauses to the reporting form, or simply described the clauses generically; i.e., ". . . typical boycott of Israel terms."

When companies volunteered the actual boycott document in addition to stating the type of request on the form (which was the case for 34.7 percent of the reports), it was found that firms reported only

[79] Based on subcommittee staff interview.
[80] See app. D at p. 76 for a copy of the reporting form.

one of several requests and reported the least onerous of the several clauses received. Firms were not required to file the actual sales document containing the boycott requests with the reporting form. There were 15 cases of clauses of an ethnic or religious nature in the Commerce Department reports and in all 15 cases, they were found on the attachments—not reported on the forms.

The Department issued a new reporting form in December 1975 eliminating the space used to describe the boycott request, and instead asked firms to attach the actual document to the report form. Although this reduces the chance of companies inaccurately describing the boycott request, it will make tabulating the data by the Department more difficult. As it is, the Department's calculations of the number and types of boycott clauses are grossly inaccurate. The subcommittee examined the coding marks made on reporting forms by Department clerks to denote the type of clauses reported on each form. The subcommittee found that more than half of the forms sampled were inaccurately coded, usually because they failed to cite all of the clauses contained in the documents or on the attachments. This situation should be corrected immediately.

Reasons for Poor Administration

Reasons for the wholly inadequate effort by the Commerce Department at implementing the congressionally mandated reporting requirement cannot be provided with certainty. The Department opposed enactment of the antiboycott measures 11 years ago and has consistently opposed efforts to strengthen them ever since. Paralleling Commerce Department opposition has been equally strong opposition from major domestic business interests. The Office of Management and Budget file on the development of the Department's reporting form reveals special input from industry lobbyists. They were given the chance to privately review the form.[81] There is no record in the OMB file of any other group or individuals being contacted for advice or voluntarily providing advice as to how the form should be designed. When the first version of the form was submitted to the Bureau of the Budget (currently called OMB), the Bureau reviewing official wrote that it was "mild" compared to the data that could be required of business concerns.[82]

Commerce Department actions or failures to act often served to undermine and circumvent the prescribed policy of the United States against furthering restrictive trade practices imposed by foreign concerns. For at least 11 years, the Department distributed trade opportunities to American businesses that contained Arab boycott clauses. This practice ended only in December 1975—after strong opposition, particularly from members of this subcommittee.[83] Vigorous congres-

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[81] See app. F at p. 80 for the Congressional Research Service report detailing the history of the Commerce Department reporting form.

[82] Ibid.

[83] Supra, at pp. 16 to 17.

sional oversight should prevent such gross abuse of administrative discretion in the future.

NATURE, SCOPE, AND IMPACT OF THE ARAB BOYCOTT

All reports filed under the anti-boycott provisions of the Export Administration Act during the period January 1, 1974, through December 5, 1975, nearly 2 years—were systematically analyzed by the subcommittee. The statistics which are presented in this section are derived from that computerized file.[84] During that period, 2,795 reports were filed by 637 reporting companies. At least 218 of these companies, or 34.2 percent, were listed on either the New York Stock Exchange or the American Stock Exchange or were affiliated with listed firms.

Boycott Trade

The total value of goods and services involved in all reported boycott requests during this nearly 2-year period was $2.7 billion. Another $1.85 billion worth of boycott requests were reported in December of 1975 to raise the full year figure to $4.55 billion.[85] However, 342 reports, or 12.2 percent, of all reports were filed without providing a dollar figure for transactions completed or sales proposed pursuant to boycott requests. Therefore, the actual value of boycott-related activities could be higher than the reported value. Boycott-governed trade is also likely to be much higher because of a series of loopholes in Commerce Department reporting regulations which have been used by exporters with at least tacit approval by the Commerce Department to avoid reporting the receipt of boycott requests.[86]

The figures developed from the boycott reports by the subcommittee differ substantially from figures provided to a Senate committee in June 1975 by the Commerce Department.[87] The difference can be attributed to a rushed audit by the Department, the first and only time it had tabulated the value of boycott-affected trade, which excluded a large number of multimillion dollar transactions filed in December 1974, but not received or processed by the Department until January 1975. Accordingly, the 1974 figure of $9.9 million for "boycott-affected transactions" provided by the Commerce Department is grossly understated.[88]

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[84] The methodology used for the subcommittee's study is described in ch. III of this report at p. 19 and in a Congressional Research Service report, app. D at p. —.

[85] A probability sample was used to estimate the sum of the dollar value of boycott affected transactions individually valued at less than $50,000 when the boycott request was reported as having been received by the exporter in December 1975. A complete tabulation was used for all reports indicating boycott affected transactions individually valued at more than $50,000 during that same period. Subcommittee staff also tabulated the dollar values for all reports filed between January 1, 1974 up to December 1975. According to statistical theory, there would be only 1 chance in 1,000 that the error introduced into the total two year estimate by this sampling procedure would vary the total dollar figure by more than .06 percent. The verification procedures used for the Subcommittee's calculations are detailed in a report prepared by the Congressional Research Service, Library of Congress. See Appendix H.

[86] These loopholes are discussed throughout pp. 23 to 28.

[87] See footnote 78, supra.

[88] See p. 26, supra.

For all types of boycott documents, the dollar values for the period January 1, 1974, to December 1, 1975, were as follows:

	Amount (millions)	Percentage of amount	Percentage of record entries
Did not comply	$29.4	1.1	2.0
Complied [1]	771.4	28.1	52.6
Undecided	27.9	1.0	1.2
No response	1,919.5	69.8	44.2
Total	2,748.2	100.0	100.0

[1] Compliance, in this instance, means the answers exporters gave to item 10 on the Commerce Department form entitled "action." See app. D at page 76 for a copy of the form.

For sales documents alone, the figures were:

	Amount (millions)	Percentage of amount	Percentage of record entries
Did not comply	$0.9	0.1	0.9
Complied	359.5	46.0	55.1
Undecided	10.1	1.4	.7
No response	411.0	52.6	43.4
Total	781.5	100.1	100.1

The extent of reported compliance indicated by these figures appears unrealistically low and can be explained by the fact that the answer to the compliance question was not made mandatory until October 1, 1975. This raises the distinct probability that many companies complied with the boycott but chose not to answer the compliance question during the period when an answer was not mandatory. When the pattern of response to the compliance question is examined in relation to whether the report was made prior to or following October 1, 1975, a totally different picture emerges. During the period when it was not mandatory to answer the compliance question, the distribution for the period was 45.1 percent compliance, while 51.7 percent gave no response.[89] During the fourth quarter of 1975, when the responses to the compliance question was mandatory, the compliance figure rose to 92.4 percent for boycott-affected sales documents reported. It can be assumed that in virtually all cases in which a sales document was involved, the boycott request was complied with.

Examination of the reports—filed between October 1, 1975, and December 5, 1975—in which companies indicated that they did not comply with the boycott request also suggests a higher degree of actual compliance with boycott requests than the stated answers of the reporting firms would indicate. Of the 77 reports indicating noncompliance during the period, closer examination revealed 7 cases in which the companies' explanations in other segments of the reporting form indicated actual compliance, while only 9 cases of confirmed noncompliance

[89] The percentages used in this report are, unless stated otherwise, based on the dollar value in boycott affected sales documents cited in Export Administration Act reports filed with the Commerce Department in the fourth quarter of 1975, when firms were required to answer the question about the firms' response to the boycott request.

could be found. There were 61 reports where it was not possible to ascertain from the reports themselves what the companies actually did.

The Meaning of "Compliance"

It was difficult to determine from most reports whether the fact that a firm said it had complied with a given request actually meant that it was boycotting Israel or otherwise altering its business practices in order to gain Arab trade. For example, some companies voluntarily stated in their reports that, although they had provided the requested documentation, they were doing business with Israel. Some of the reporting firms are in fact exporting to both Israel and to Arab States. Actions of this type would appear to be qualitatively different from a company which incorporates boycott clauses in purchase orders to its American suppliers or which changes suppliers in order to retain Arab business.

This situation is illustrated by a New York grain dealer who reported to the Department of Commerce that its firm had exported $3 million worth of wheat with a certificate of origin that declares that the goods, the wheat, is "of U.S. origin" and was not manufactured in part or in whole in Israel. The certificate of origin was required even though the product obviously contained no component parts from Israel.

Many countries in addition to Arab countries require certificates of origin.[90] However, the certificates used by most countries with significant diversified import trading, are of an affirmative variety, that is, for example, a statement that the goods shipped are "of U.S. origin." Certificates used by Arab countries are usually of a negative variety, that is, a statement that the goods are "not of Israeli origin." Certificates of origin are used in order to further the trade and political policies of persons or groups in a variety of countries.

The subcommittee finds that there are some practices imposed by foreign concerns which may serve legitimate interests of a foreign country and which do not necessarily involve using American firms as instruments of economic warfare. It may well be necessary for an Arab country to require exporters not to use Israeli ships or stop at Israeli ports en route to the Arab country for reasons of security. The same may be true for goods going to Israel, Pakistan, and India.

It is difficult in some instances for American exporters to determine what the rationale is behind a particular practice. Some practices, however, are clearly offensive to American business ethics and in several situations can be contrary to U.S. law. These would include such practices as asking American business firms whether they have Jews or Zionists on their boards of directors or whether senior management have made contributions to organizations supporting Israel.

Given the present state of political relations within the Middle East, it appears unlikely that the Arab States will terminate their boycott

[90] Customs and importing requirements throughout the world are varied. Brandon's Shipper & Forwarder is one of several trade publications for exporters which list the customs rules of major importing countries. Among the many shipping requirements listed for exporters Iraq on p. 60 of Brandon's, are: "In the preparation of documents, the term Persian Gulf should not be used. The correct term is Arabian Gulf." The rules for Iran, listed on the same page, include this warning: "Shipments should be addressed using the term Persian Gulf, not Arabian Gulf."

in the near future. Therefore, the need remains to spell out for the benefit of the American business community clear guidelines on permissible and nonpermissible activities since the current inadequate guidelines will continue to cause anxiety and be disruptive to the normal flow of commercial intercourse. The subcommittee believes that the recommendations outlined in this report will provide necessary guidelines needed for American business.

Types of Boycott Clauses Found

A major area of analytical difficulty involved determining the nature of the action with which the exporter was asked to comply or the type of information requested. For analytical purposes, it was found that the types of boycott action reported could be classified into seven types reflecting clauses in boycott-related documents, each containing several subcategories as follows: [91]

1. Origin-of-goods clause

This includes any request for information referring to the country of origin of a product or its ingredients of components, such as a: (*a*) Negative certificate of origin; (*b*) statement that the goods or any ingredients or component parts are not of Israreli origin; (*c*) request to list the country or origin of any components; and (*d*) statement that the product is wholly of U.S. origin.

The typical clause of this type reads:

I (an officer for the exporting firm) certify and affirm that the goods shipped are not of Israeli origin or are wholly of U.S. origin.

Clauses relating to origin were among the most common found.

2. Israeli clause

This clause encompasses requests for information regarding the existence of an ongoing contractual relationship with Israel, actually doing business in Israel, or generally contributing to the Israeli economy, including: (*a*) Having main or branch factories in Israel; (*b*) having an assembly plant in Israel or having an agent assembling a company's product in Israel; (*c*) maintaining agencies or headquarters for Middle East operations in Israel; (*d*) holding shares in Israeli companies or factories; (*e*) giving consultative services or technical assistance to an Israeli factory; (*f*) having managers or directors who are members of a joint foreign-Israeli Chamber of Commerce; (*g*) acting as agents for Israeli companies or principal importers of Israeli products outside Israel; and (*h*) prospecting for natural resources, for example, petroleum, within Israel.

The typical clause of this type is one that asks the exporter to certify that it does not have any subsidiaries or branches located in Israel. Detailed questions along these lines were common for questionnaires, one of the four types of documents classified for this study.[92]

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[91] The listing of subcategories is only illustrative and not intended to be definitive or exclusionary.

[92] For more information on questionnaire, see p. 20.

3. Shipping clause

This clause concerns international freight carriers. It is a request for certification that a company is not using an airline or steamship line that is blacklisted or that it not ship its goods on a vessel which on a particular voyage has a specific port of call, usually Israeli, but in a few instances, Indian or Pakistani in the case of the Indian-Pakistani boycott against each other.

4. Insurance clause

This clause is a request that a company not use a blacklisted insurance company to insure the goods being exported, or in most cases, to certify that the insurance company it deals with is not blacklisted.

5. Blacklisted companies clause

This is an attempt to determine the relationship of the exporter to the blacklist and to any blacklisted companies. It includes (*a*) a statement that the company is not blacklisted; (*b*) a statement that the company is not a parent, subsidiary, an affiliate of or otherwise related to a blacklisted firm; and (*c*) a statement that the company does not or will not do business with a blacklisted company.

The typical clause of this type related to certifying that the goods being exported were not manufactured in whole or in part by a blacklisted firm.

6. Religious/ethnic clause

This is intended to elicit information regarding American Jews and purports not to apply to Israeli nationals. It encompasses any request for information or action regarding the following: (*a*) The religious affiliation of the personnel of any U.S. company, including not only the company receiving the request but also companies with which it may do business; (*b*) any statements or action involving hiring or assigning or other personnel practices; (*c*) any statement about membership in or donations to Jewish organizations, such as the United Jewish Appeal; (*d*) any references to individual beliefs in Zionism, such as "Zionist tendencies."

The typical clause of this type asks whether the "nationality" of the firm's senior personnel is Jewish. Clauses of this type were found in 15 out of the over 4,000 reports examined. As discussed in another section of this report, a significantly greater number of requests of this type may well have been received by U.S. business concerns but not reported due to loopholes in the Commerce Department's reporting regulations.

7. General clause

This is a general catchall clause which often followed one or more of the clauses listed above. It typically required exporters to certify that they will "observe the rules of the Arab boycott" or "otherwise comply with the boycott."

There was a wide variation in the reporting of the types of action which the reporting firms were asked to take. The requested activity frequently was reported on the standard form and not in the attachments and vice versa. To deal with this problem, the subcommittee

separately analyzed the companies' statements on the standard form, the letter reports which covered multiple transactions, as well as the attachments. The occurrence of seven the types of clauses in all three types of documents was as follows:

	Percentage of standard forms listing clause [1]	Percentage of attachments listing clause
Religious/ethnic clause		1.2
Israeli economy clause	3.6	7.2
Origin-of-goods clause	74.2	57.0
Blacklisted companies clause	14.6	14.0
Shipping clause	54.6	31.5
Insurance clause	8.8	6.5
General clause	3.8	4.5

[1] The percentages used in both columns relate to the dollar value of documents containing each of these clauses. Each column adds up to more than 100 percent because most boycott documents contained 2 or more clauses. Thus, the dollar value of documents attached to some of the reports which had an ethnic or religious type of clause was 1.2 percent of the total dollar value of all documents attached to reporting forms. None were reported on the reporting form. The dollar value of clauses of the Israeli economy type reported on a report form was 3.6 percent of the dollar value reported on all report forms and 7.2 percent of the dollar value of all boycott documents attached to reports. Note that some companies reported the clauses on the form and did not attach the actual boycott documents, while others sent the document and wrote "see attached" on the report. Some did both. Accordingly, separate tabulations were used for the two categories.

For sales documents alone, these percentages were as follows:

	Percentage of standard forms listing clause	Percentage of attachments listing clause
Religious/ethnic clause		0.5
Israeli economy clause	2.2	1.8
Origin-of-goods clause	72.7	53.8
Blacklisted companies clause	13.6	13.1
Shipping clause	53.8	30.3
Insurance clause	8.5	6.2
General clause	2.3	2.0

Over 90 percent of the origin-of-goods, blacklisted companies, shipping and insurance clauses were concentrated within reports indicating sales. As indicated in the charts above, the most prevalent clauses were the origin-of-goods clause and the shipping clause. Under the Commerce Department regulations, a shipping clause does not have to be reported if it is the only clause present in a document.

Boycott requests containing a religious/ethnic clause were found only in boycott documents attached to 15 reports. In none of these reports did the reporting company indicate that it had refused to comply with the boycott request. On nine reports, the companies gave no response to the compliance question; included were seven cases in which the company was asked to certify that the company was not a "Jewish firm" or controlled by members of the Jewish faith and two cases in which company officials were asked to make statements regarding membership in or donations to Jewish organizations.

Four reports, in which the companies indicated that they had made no decision regarding their response to the boycott request, involved questions concerning employee membership in or donations to Jewish organizations. Two of these reports were filed by a firm which indicated that a company official had visited the Middle East to explain that

company policy prohibited disclosure of private charitable donations by corporate officials. The result of this action was not indicated.

The subcommittee found discriminatory clauses in attachments to reports by two firms whose answer to the compliance question on the standard report form indicated that they had complied. Of these two reports, one involved donations to or membership in "Zionist" or "pro-Israeli" organizations. The second involved a proposed agreement to "employ only such personnel as are nationals of this country and are not Jews."

The Commerce Department made a search of their files over one year ago for reports indicating requests of a religious nature after receiving complaints from private citizens. These incidents of apparent discrimination were referred by the Commerce Department to the Department of Justice. As of the date of publication, the Justice Department has not announced any action regarding these incidents.

Boycotted and Boycotting Countries

The most frequently boycotted country was Israel, which was cited alone in 84.5 percent of all boycott reports, in combination with other countries, such as South Africa and Rhodesia, 13.2 percent of the time. The remainder was spread among a variety of countries, mostly Arab. These listings probably represent a misunderstanding on the part of the reporting companies, particularly in light of the number of cases in which the boycotting country and the boycotted country was reported as being the same country.[93]

The Arab league countries were most frequently cited as boycotters, being cited in 88.8 percent of all boycott-affected reports, and accounting for 93.7 percent of reported boycott dollar value. Nine Arab countries each accounted for more than 1 percent of the total value of all boycott-related activities. These countries and their percent of the total boycott sales value, were: Saudi Arabia, 21.8 percent; United Arab Emirates, 20.5 percent; Kuwait, 13.8 percent; Libya, 9.1 percent; Egypt, 5.7 percent; Iraq, 4.3 percent; Syria, 3.2 percent; Lebanon, 1.6 percent; and Oman, 1.2 percent.

Economic Analysis of Trade Data

What was the economic impact of the Arab boycott on American business? Frankly, we cannot calculate the answer to that question due to several factors. As discussed in the preceding sections, loopholes in Commerce Department reporting regulations and procedures allowed for not reporting some boycott requests. The Department's enforcement efforts were all but non-existent. Thus, the Subcommittee assumes that large numbers of firms did not report boycott requests. Furthermore, we cannot calculate the impact that occurs when some companies refrain from doing business with Israel or with boycotted suppliers because of the boycott without actually receiving a request to participate in the boycott.

The economic analysis that follows is based only on sales documents and does not (as explained on page 19) include the very high level of

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[93] 10.7 percent of all reporting firms made this error, apparently because of ambiguous instructions on the Commerce Department reporting form.

boycott affected trade reported for December 1975. Accordingly, the figures used in this subsection are conservative. It does, however, illustrate the kind of analysis that the Department could make using the report data and the value the analysis would have if the data were complete.

In the 23-month period from January 1, 1974 to November 30, 1975, reported boycott-related sales amounted to 0.4 percent of total U.S. exports worldwide. Of the total value of boycott-related sales, 95.8 percent involved Arab league countries as the stated boycott requester, accounting for $746.2 million or 9 percent of total U.S. exports to Arab league countries during the 23-month period. As indicated earlier, various loopholes in Commerce Department regulations such as the requirement that only the initial stage of a boycott contact be reported resulted in underreporting of boycott governed sales. If the reported data are to be believed, the vast majority of sales to the Arab league countries would appear not to have involved boycott stipulations. On the other hand, there may have been a substantial failure to report all sales and other activities related to boycott requests.

Of the 178 commodity and service categories which were used by the subcommittee for purposes of trade analysis, 125 of them were identified at least once as a boycott-affected commodity or service. Of these 125 categories only 38 categories registered sales in excess of $1 million. Of these 38 categories, only 14 individually accounted for more than 1 percent of boycott-related trade, and only 5 of these categories exceed 0.5 percent of U.S. trade with the Arab league nations during this period. The leading five commodity categories were with the Arab league nations during this period. These five categories were:

Commodity code No.	Commodity	Sales (millions)
710	Engines and turbines, except aircraft and automobile engines	$210.9
744	Mining and oil field machinery	71.6
733	Trucks and special purpose vehicles	59.8
732	Passenger cars	57.3
747	Pumps, centrifuges, compressors, blowers and fans	46.6

These five categories accounted for 57.1 percent of boycott-related trade—the equivalent of 5.4 percent of U.S. exports to the Arab League countries. The top 14 commodity categories which individually totaled more than 1 percent of boycott sales accounted for 87.9 percent of boycott-related trade during the 23-month period, but only 8.2 percent of U.S. exports to the Arab League countries during the same period. Thus, the pattern of concentration of boycott impact among commodity groups is narrow.

Moreover, the pattern of concentration of boycott-affected trade does not reflect the distribution of exports among commodity groups to Arab countries, according to published trade data. The following categories accounted for 84.4 percent of the boycott-affected trade, but only 64.8 percent of total U.S. exports to the Arab League countries during the 23-month period: cereal and cereal preparations, machinery (except electric), electrical machinery, apparatus and appliances, and transport equipment.

Engines and turbines, the largest category, accounting for 27.1 percent of boycott-affected trade, tended to skew the distribution pattern among boycott-affected categories. This comparison indicates that the impact of the Arab boycott on U.S. exports to the Arab League countries varies from the overall pattern of U.S. exports to these countries. The Commerce Department failed to develop and utilize such information.

How the Boycott Works

The Arab League's boycott is administered by the Central Office for the Boycott of Israel. Its chief executive is the Secretariat General, Mohammed Mahmoud Mahgoub. The central office conducts meetings twice a year where representatives from the various Arab States meet as a council to determine which firms should be added to, or removed from, what they call the boycott "blacklist." In theory, the list contains the names of firms, now about 1,500, who the central office believes have contributed to the economic growth of Israel either directly by doing business in or with Israel, or by having an affiliation with a "blacklisted" firm.[94]

The Central Office for the Boycott of Israel has long been reluctant to make public its blacklist or the names of firms who are added to, or removed from, the list when representatives to the boycott office meet twice a year. The situation is further complicated by the fact that each of 20 Arab countries publishes its own lists and entrepreneurs in various Arab countries sell copies of their own versions of the list complete with paid advertisements.

One of the first copies of an Arab blacklist made public in this country was published in February 1975 by a Senate committee. To the boycotted companies, action by the Arab League Boycott Office often seems illogical. In testimony before a House committee, Representative Benjamin S. Rosenthal of New York summarized the reactions of boycotted companies:

> A spokesman for the Hertz system, which has licensed auto rental outlets in both Israel and Egypt, declared: "We are puzzled to find ourselves listed. From time to time we get applications from parties in Arab lands for licenses." The chairman of Lord & Taylor department store chain said that he first learned of the blacklist in 1971 when a shipment of goods was impounded in Saudi Arabia. "So we know we are on the list," he said. "But we don't know why, never having been told." A Burlington Industries spokesman noted, "I did not know we were on any blacklist and don't know why we should be. We are shocked to hear it. We do business with both Israel and the Arab world—far more business in the Arab world, in fact." The R[illegible]lic Steel Corp. observed that it had been put on the list "although we have [illegible] any investments or interest in the Mid-east." American Electric Power Co. [illegible]kesmen were similarly bewildered as to their company's appearance on the list.[95]

One of the blacklisted firms almost totally excluded from trade with Arab League countries is the Xerox Corp. A corporate counsel for Xerox, says that the company was placed on the boycott list 10 years ago when it sponsored a television series on countries who are members of the United Nations.[96] One of these documentaries, about Israel, was

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[94] For a copy of the Arab Boycott Regulations, see subcommittee hearings, p. 146.
[95] Testimony of Representative Rosenthal before the Committee on International Relations on June 9, 1976.
[96] From a subcommittee staff interview.

entitled "Let My People Go." The Xerox representative said Arab countries felt the program was "pro-Zionist" and have blacklisted the firm ever since.

Fortune magazine, in a July 1975 article, provided a succinct summary of how and why some firms are blacklisted while others are not:

> Many American companies in the defense industry—McDonnell Douglas, United Aircraft, General Electric, Hughes Aircraft, Textron—are selling or have sold war equipment to Israel. Of course, each of them should be on the list in boldface type for rendering such "material" help to the enemy. But they are all omitted for the overriding reason that the Arabs want the choice of the best weaponry without inhibitions about boycotts. The Arabs use as a convenient rationale the fact that the contract to purchase is made with the Department of Defense.

A review of Export Administration Act reports confirms that some firms listed on the Arab blacklist are still able to do business with Arab countries. Apparently, they are subject to the same practices that nonlisted companies are subject to, such as signing certificates of origin.

The selectivity or inconsistency of the impact of the Arab boycott is frequently cited as an indication that the Arabs are not serious about their boycott of Israel. However, this may represent a misunderstanding of the nature of an economic boycott as an instrument of economic warfare. According to political economist Klaus Knorr:

> The rational objective of economic warfare, pursued by economic measures, is not, of course, or should not be, simply to cause maximum losses to the adversary's economic capability. The logic of this type of conflict prescribes that the enemy suffer a maximum reduction of his economic bases relative to one's own. Simply severing his foreign trade is unlikely to bring this result about. After all, his exports absorb a part of his productive capacity, and their interruption may engender production bottlenecks in one's own economy or that of allies. The appropriate strategy would interfere with his commerce selectively in order to cause maximum net impairment to his economy. Clearly, one's own costs must be taken into account. As mentioned, a complete boycott of the enemy's goods may harm one's own side more than his.[97]

Getting Off the Blacklist

Getting off the blacklist is difficult, frequently awkward and sometimes costly.[98] The experience of the Bulova Watch Co. is a case in point. In the mid-1960's, Bulova had only limited sales in the Middle East when it found itself on the blacklist. Corporate official for Bulova were approached by a Syrian lawyer who said he was in an excellent position to aid Bulova and other U.S. companies in being removed from the blacklist. Bulova officials paid the Syrian lawyer a fee for his

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[97] Knorr, Klaus, "The Political Economy of International Relations," New York, Basic Books, Inc. (1973), pp. 135-136.

[98] The Commissioner General of the Central Office for the Boycott of Israel, Mr. Mohammed Mahmoud Mahgoub, in an Aug. 31, 1975, letter to the New York office of the National Association of Securities Dealers, Inc., set forth the method companies have to use in order to be removed from the boycott list:

"The banned company can write to any of the regional boycott offices in any Arab country or directly to the Central Office for the Boycott of Israel to inquire what documents are necessary in order to be excluded from the ban and to become able to resume activities in the Arab countries. As soon as this letter reaches any of the boycott offices the answer to the company in question will be sent the same day, stating the necessary documents to be submitted. If the company produces the required documents fully and completely and if the documents are clear and correct, then it is possible to remove the ban within 3 months."

A complete text of the letter is printed as app. G at p. 85.

future efforts, and assumed that negotiations were going well until they got word that he had been executed after being charged with espionage for allegedly passing military secrets to a foreign government.

Bulova made no other efforts to remove itself from the blacklist until September of 1975 when Ms. Teheresa Marmyo, associate counsel for the Bulova Co. in New York, wrote to the Commissioner General, Central Office for the Boycott of Israel. The Commissioner General, Mr. Mohammed Mahmoud Mahgoub, replied on September 29, 1975 [99] that in order to be removed, the Boycott Office would need satisfactory answers concerning the relationship between the Bulova Watch Co. and the Bulova Foundation as well as questions concerning whether any owners or members of the board of directors are members of any organizations, committees or societies working for the interests of Israel or Zionism.

In addition, the Bulova Watch Co. was also asked to provide:

> A document to the effect that your company, the Bulova Foundation, any of their subsidiary companies, their owners or the members of the Board of Directors of all of the said companies are not joining any organizations, committees or societies working for the interests of Israel or Zionism whether they are situated inside or outside Israel; as well as the undertaking that of the above entities and persons will never in the future join such organizations, committees or societies or give or collect donations to any of them.[100]

Ms. Marmyo said that the Bulova Foundation is a separate legal entity from the watch company. She concluded that the demands in Mr. Mahgoub's letter are onerous and unreasonable. Neither she nor any other representatives of her firm have responded to the letter.

The International Telephone & Telegraph Corp. has apparently had some success at removing boycott clauses from proposed Arab contracts, according to a March 11, 1970, Commerce Department memorandum.[101] The memo describes a meeting between officials of the Commerce Department and of ITT concerning the company's refusal to respond to a Saudi Arabian telephone maintenance contract offer.

An ITT official, according to the memo, said that the firm declined to submit a bid on the multimillion-dollar proposal because it contained a boycott clause that would allow that country to cancel the contract any time it is proved that we (ITT) are having business with Israel.[102] The ITT official said that it then had 27 contracts throughout the Arab world and that none of them contained boycott clauses. He said that this had been possible because an agent for the company "had successfully approached the (Arab countries) on omitting this clause in prior contracts," according to the memo.[103]

Subcommittee staff interviewed both company staff and Commerce Department personnel who were present at the meeting, including the Department official who wrote the memo. Those interviewed could recall the meeting in only general terms, and could not remember any

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[99] This information is based on a subcommittee staff interview. A copy of the letter to Bulova Watch Co. is printed as app. H at p. 88.

[100] Ibid.

[101] The memorandum was obtained from the Commerce Department pursuant to subcommittee subpena issued Dec. 2, 1975.

[102] Ibid.

[103] Ibid.

statements about the company being able to have boycott clauses removed from proposed Arab contracts.[104]

Chairman Moss wrote to chairman of the Board of Directors of ITT, Mr. Harold Geneen, to seek more information on this matter. On June 18, 1976, Mr. Herbert A. Steinke, Jr., associate general counsel for ITT, responded to the chairman's letter. On the basis of that letter and conversations with ITT employees, subcommittee staff was able to confirm only one recent instance in which ITT negotiators were able to have a boycott clause removed from a contract.[105]

Information concerning a variety of special fees related to implementation of the boycott has emerged as the result of the Securities and Exchange Commission's voluntary disclosure program for questionable corporate payments. The General Tire and Rubber Co. acknowledged to the SEC that it paid various fees to be removed from the blacklist.[106] On May 10, 1976, General Tire and Rubber Co. representatives signed a consent decree confirming that the company had made "improper payments to officials and employees of Government, including . . . in connection with General Tire's successful attempt to obtain removal from the Arab Boycott list."[107] The company also said it would establish "a special review committee" to further investigate this and other improper payments.

The consent decree, however, provided fewer details about the incident than were provided by a news story published earlier. According to a March 26, 1976 Associated Press wire story, General Tire and Rubber Co. paid $150,000 to a Lebanese firm to get off an Arab Boycott blacklist:

> [Mr.] Tress Pittenger, General Tire vice president and general counsel, said . . . that General Tire paid the sum to a subsidiary of Triad Financial Establishment of Lebanon for Triad's aid in removing General Tire from the list of firms being boycotted for dealing with Israel.

The Santa Fe International Corp. disclosed in a registration statement filed with the SEC that since the 1950's, it has been required to comply with "local legal requirements imposed pursuant to the Arab boycott of Israel."[108] The "local requirements" were not specified in the statement. The company stated it does not believe it violated U.S. laws with reference to these practices. However, the company stated that if Congress were to enact new legislation precluding compliance with such local laws, their business in the Arab world would be adversely affected.[109]

The Hospital Corporation of America disclosed in a registration statement that an employment discrimination suit was brought against the firm in proceedings before the Equal Employment Opportunities Commission in 1975.[110] The suit alleges that the company discriminated on the basis of religion in seeking to employ persons for work in a Saudi Arabian hospital that the company manages.

The Commerce Department has not specifically required disclosure of a firm's efforts to remove itself from the Arab blacklist or other-

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[104] Based on subcommittee staff interviews.
[105] Ibid.
[106] SEC Litigation Release No. 7380. See also SEC File No. 1-1520.
[107] Ibid.
[108] SEC file No. 2-55175.
[109] Ibid.
[110] SEC file No. 2-55678.

wise submit to boycott demands. Accordingly, it has been difficult to learn about firms' efforts to remove themselves from the blacklist. However, Chairman Roderick Hills of the Securities and Exchange Commission, provided insight into some of these activities in recent congressional testimony.[111] Chairman Hills testified that a "$30–40 million American company" interested in increasing its receipt of Arab investments terminated its sizeable account with an American investment banking firm because of the latter's close relations with Israel. He disclosed that two American investment banking firms were disciplined by the National Association of Security Dealers for violating its rules of fair practices in substituting nonblacklisted affiliated for blacklisted firms in underwritings with Arab investors.[112]

On January 19, 1976, the Justice Department filed a suit against the Bechtel Corp. for violating the Sherman Antitrust Act for refusing to deal with blacklisted American subcontractors and, as the suit contends, requiring American subcontractors to refuse to do business with blacklisted persons or entities.[113] A recent Senate committee report stated that a U.S. bus manufacturer had its contract to sell buses to an Arab State terminated when it learned that seats were to be made by an American company on the blacklist.[114] Examples such as these illustrate that the impact of the boycott goes more deeply than suggested by the overall boycott trade data.

Impact on Domestic Firms

Of businesses sustaining losses due to boycott practices, the Radio Corporation of America is a leading example. An RCA executive told the subcommittee[115] that prior to being placed on the "blacklist", RCA did approximately $10 million worth of business annually with Arab countries. RCA, the subcommittee was told, had every reason to believe that its sales to these countries would increase above the $10 million figure. Since being blacklisted, its annual sales to the same countries have dropped to less than $9 million, a direct loss of over $1 million annually.

Large multinational corporations are not the only firms who have suffered losses as the result of the boycott. McKee-Pedersen Instruments in Danville, Calif. is a small firm which manufacturers scientific instruments used largely by schools and universities. It has had only two sales to the Middle East both to Kuwait University involving the shipment of electronic instruments used for chemistry experiments.

The first sale—in December of 1974—went very smoothly, according to Dr. Richard G. McKee, vice president of the company.[116] But the second shipment in August 1975 encountered considerable difficulties.

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[111] June 18, 1976, before the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations. (To be published.)

[112] Ibid.

[113] The Justice Department complaint is discussed in detail in ch. 4.

[114] Senate Committee on Banking, Housing and Urban Affairs, "Foreign Boycotts and Domestic and Foreign Investments Improved Disclosure Acts of 1975," Report No. 94-632, at p. 5.

[115] Letter to Chairman John E. Moss from Mr. Charles R. Denny, RCA vice president. Printed at p. 199 of the subcommittee hearings, supra. Chairman Moss asked for the information after reading an article quoting an unnamed RCA executive as follows: "[W] are not going to end relations with Israel to get an Arab contract. This is a moral issue."

[116] Based on subcommittee staff interviews.

On both occasions, the firm was instructed to provide the name of the manufacturer of all of the goods to be shipped. Company officials did not find this requirement onerous or believe it would further the Arab boycott against Israel. Accordingly, the shipping invoice [117] stated that McKee-Pedersen Instruments manufactured the products and that the manufacturer of the spare parts were: General Electric, Motorola, Quarzlampen Gesellschaft, and National Semi Conductor. Both shipments required a certificate of origin to be signed by the United States-Arab Chamber of Commerce (Pacific), Inc., in San Francisco, Calif.[118] This requirement was to be fulfilled by the Amerford International Corp., the firm's freight forwarder.

The air freight forwarder reported to McKee-Pedersen that it was unable to get the required certification for the second shipment. The United States-Arab Chamber of Commerce refused to sign the certificate because the shipping invoice said that Motorola was the manufacturer of some of the spare parts in the shipment. Actually, the Motorola parts accounted for only $33.88 worth of the $4,489.80 shipment.[119]

Dr. McKee states that he phoned Mr. Fareed Asfor, director of the United States-Arab Chamber of Commerce in San Francisco. He states: "I pointed out that we could not afford to lose this money and that Motorola parts were not any cause of trouble on the previous shipment." He stated that they probably had overlooked it by accident that time. He also stated that he did not want us to lose money. I had the impression that something could be worked out if Kuwait University could not get the shipment through customs or had problems in authorizing payment.[120] Dr. McKee wrote or phoned numerous persons in order to obtain help. He was advised by the Commerce Department to file an Export Administration report. He did. The report pointed out that a failure to get payment for the $4,000 shipment, then in Kuwait, could well "cause bankruptcy" for the small firm.

Dr. McKee found the situation where the firm could not recover either the shipment or the payment due to boycotted Motorola parts ironic when the firm's freight forwarder told him that "the Mid-America-Arab Chamber of Commerce in Chicago routinely signs certificates of origin for Motorola." Dr. McKee said a new certificate of origin was prepared, sent to the Mid-America-Arab Chamber of Commerce, and was approved. This new certificate needed for payment with a letter of credit was not used, however. Instead, the firm had also sent a request to the Kuwait University for payment via a 30-day sight draft [121] which was finally honored and payment received in January of this year, some 6 months after shipping the requested goods. Thus, the certification for a letter of credit was no longer needed. Dr. McKee says that the cost, unusual time delays, and uncertainties of payment, make future sales by his firm to Arab countries less inviting.[122]

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[117] A copy of the shipping invoice is printed as app. I at p. 89.
[118] Ibid.
[119] Based on subcommittee staff interview.
[120] Ibid.
[121] Ibid.
[122] Ibid.

United States-Arab Chambers of Commerce

The role of United States-Arab Chambers of Commerce located in New York, Houston, Chicago, and San Francisco, raise unique issues regarding the Arab boycott and its impact on U.S. laws and business practices. Incorporated separately with separate sets of boards of directors, they are generally known to serve two principal functions: (1) To promote trade between the United States and Arab countries, and (2) "legalize" or notarize the certification of various boycott clauses in shipping documents.

According to the New York State Assembly Subcommittee on Human Rights for Boycott Investigation, Committee on Government Operations,[123] the United States-Arab Chamber of Commerce had processed approximately 90,000 certificates of origin and other clauses required by most Arab countries.[124] For a fee of less than $5, an officer for the chamber will sign a rubber stamped clause, such as:

> The U.S.-Arab Chamber of Commerce, Inc., a recognized Chamber of Commerce, hereby declares that, to the best of its knowledge and belief, the prices stated in this invoice are the current export market prices, and that the origin of the goods described herein is the United States of America.
>
> U.S.-ARAB CHAMBER OF COMMERCE, INC.,
> By M. A. BAGHAL,
> *Executive Secretary.*[125]

Independently, the subcommittee confirmed that at least some of these Arab chambers of commerce certified documents containing negative certificates of origin such as:

> We certify that the information [contained] herein is true and correct to the best of our knowledge and the origin of the goods herein contained is the United States of America and not manufactured in ISRAEL, nor did the raw materials used in their manufacture originate in Israel.
>
> We further certify that the above vessel did not call and will not intend to call at any Israeli port and is not on the Arab boycott black list.[126]

"Blacklisting" clauses have also been "legalized" or certified by the same chambers, the subcommittee has confirmed. Such practices by the chambers, in apparent contravention of expressed U.S. policy by tax-exempt corporations, raise questions as to whether the granting and renewal of their tax exemption is appropriate.[127] In addition to officers of major U.S. corporations, the chambers have representatives of foreign governments on their boards of directors.[128] The role of certifying boycott certificates serves to carry out the interests and policies of foreign governments. The chambers and their directors have apparently

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[123] Hearings held Dec. 8, 1975 and Feb. 5, and 6, 1976. Assemblyman Joseph F. Lisa, chairman; Howard M. Squadron, subcommittee counsel.

[124] Ibid.

[125] Ibid.

[126] Based on subcommittee staff interviews with exporters and review of Export Administration Act reports.

[127] There is case law standing for the proposition that an organization's tax exemption status under section 501(c) of the Internal Revenue Code can be terminated as the result of activities which are illegal or merely contrary to public policy. These cases arose from efforts to end tax exemptions for private schools which practiced racial segregation. See *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C.), affirmed without opinion sub nom., *Coit* v. *Green*, 404 U.S. 997 (1971):

"The Internal Revenue Code does not contemplate the granting of special Federal tax benefits to trusts or organizations, whether or not entitled to the special State rules relating to charitable trusts, whose organization or operation contravene Federal public policy." Ibid. at p. 1162.

[128] Subcommittee staff interview with Mr. Howard Squadron. See footnote 120, supra.

not [129] registered as foreign agents under the Foreign Agents Registration Act.[130]

Corporate Disclosure

In order to gain more information about the impact of the Arab boycott on American business, the American Jewish Congress began a corporate disclosure campaign last December. Under this program, stockholders of major U.S. companies sought information concerning the participation of these firms in the Arab boycott, pursuant to various Federal securities laws.

Disclosure requirements are found in the Securities Act of 1933 [131] and the Securities Exchange Act of 1934.[132] Section 10 of the 1933 act and sections 12 and 13 of the 1934 act provide disclosure of information is material and "necessary or appropriate for the proper protection of investors." The Supreme Court [133] has stated that material facts are those which "a reasonable investor might have considered * * * important in the making of this decision" to invest or not to invest.

In response to inquiries to scores of companies and various efforts to place resolutions against boycott participation in company proxy statements or before annual shareholders meetings, the American Jewish Congress has received statements from numerous firms concerning their activities and policies regarding the Arab boycott. On March 16, 1976, the American Jewish Congress issued a press release stating,[134] in part, that:

> The following companies [have] given written assurances that they would not comply with discriminatory or restrictive trade practices: American Brands, Beatrice Foods, Bucyrus-Erie, Continental Can, El Paso Natural Gas, General Foods, General Motors, Georgia-Pacific, Greyhound, Kennecott Copper, McDonnell Douglas, Ogden, Pitney-Bowes, RCA, Xerox, Scott Paper, G. D. Searle, Simmons, Texaco, Textron, U.S. Gypsum, and Warner Communications.

Subcommittee staff examined the statements submitted by these firms to the American Jewish Congress. Some of the statements were as short as one page, others as long as seven pages. Many offered only generalized, sometimes vague, discriptions of their past trading practices regarding the boycott. Several firms, for example, did not define what was meant by "discriminatory or restrictive trade practices," the activities they said they did not engage in. Representatives for many of these firms said that they had and would continue to sign certificates of origin and state the name of their shipper and insurance companies in compliance with Arab importing requirements, but said that doing so did not involve altering corporate policies on their trade policies with Israel.

Furthermore, these firms generally stated that they would not refrain from doing business with a boycotted firm as the result of the boycott or would not discriminate against any person on the basis of

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[129] Ibid.

[130] 22 U.S.C. 612 generally proscribes that persons in the United States who work to further foreign political interests, as agents for those interests, must register and report on their activities with the Attorney General.

[131] 15 U.S.C. 77a, et seq.

[132] 15 U.S.C. 78a, et seq.

[133] *Affiliated Ute Citizen* v. *United States*, 406 U.S. 128, 153, 154 (1972).

[134] Based on subcommittee staff interviews with Will Maslow, American Jewish Congress.

religion, race, sex, or creed. The longest, most detailed statement submitted was that of the General Motors Corp. However, the corporate practices and policies detailed appeared representative of statements submitted by the other firms. Accordingly, the GM statement is printed as appendix J at page 90 to illustrate the type of disclosure that has been obtained under this program.

This type of disclosure process is costly and usually results in only a generic account of a firm's practices and policies regarding foreign-imposed boycotts. Although the securities laws enable investors to gain information that can influence their financial decisions, its application is limited largely because it is difficult to determine what information is "material" and accordingly must be disclosed to investors. Amending the Export Administration Act to provide for public disclosure upon request, with the exception of the name of the importer as well as information about the type of commodities and cost for a given transaction, would aid investors in obtaining information about public corporations needed for making financial decisions. This change in the act would also enhance enforcement of the Export Administration Act.

International Implications

It is difficult to estimate with certainty how Arab countries would perceive congressional action to protect American businesses from being used to further the boycott against another country friendly to the United States. There have been several news stories quoting Saudi Arabian officials to the effect that enactment of new legislaiton by Congress would result in a loss to the United States of as much as $50 billion in export sales over the next 5 years.[135] Past trading practices, however, suggest that a switch away from the United States would not necessarily result.

Arab trade with the Netherlands and West Germany over the past 2 years has not declined and in fact has grown substantially in recent years despite reportedly strong anti-Arab boycott positions taken by those countries, and countries which have taken a more supportive position in response to the boycott have not enjoyed correspondingly greater trade with the Arabs. For example, an Associated Press story published in the Washington Post on March 4 of this year:

> France's dream of billions of extra dollars in trade revenue resulting from its pro-Arab foreign policy has been badly shattered. . . . Figures of the Organization for Economic Cooperation and Development (OECD) show that countries criticized as being pro-Israel, such as Holland, West Germany and Sweden, actually have improved their nonmilitary trade with the Middle East more than the French.[136]

According to OECD figures, France improved its monthly trade with the Middle East, excluding Israel but including Iran,[137] 49.9 percent in 1974 over 1973. At the same time, the U.S. average monthly trade was up 109.1 percent, West Germany was up 100 percent, Holland

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[135] See, for example, Baltimore Sun, Apr. 23, 1976; New York Times, Mar. 12, 1976; Christian Science Monitor, Mar. 14, 1976.

[136] Ibid.

[137] Although the story included Iran, that country is not a participant in the boycott nor an Arab country. But even when excluding Iran, the trends would remain essentially the same.

up 83 percent, and Sweden increased these sales by 93 percent. OECD figures for 1975 support the same trend.[138]

These trends apparently reflect Arab business judgments based on the quality and price of the goods sold by the major exporters. The United States has a major competitive advantage in agricultural products and a wide variety of manufactured products. It is nonetheless difficult to predict what the impact of legislation prohibiting compliance with boycott requests will be on United States trade with Arab nations.

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[138] Ibid.

CHAPTER V.—LEGAL ASPECTS OF THE ARAB BOYCOTT

INTRODUCTION

The basic legal issues raised by the Arab boycott involve U.S. antitrust law, the Export Administration Act, corporate disclosure laws, and civil rights laws. The applicability of U.S. civil rights law is raised, for example, by an American firm's decision to comply with the boycott practice of requiring certification that the U.S. firm currently employs no members of the Jewish faith and will not do so as long as the firm continues to do business with the requesting concern, that no member of the firm's board of directors is Jewish, or that the firm contracting to do business in an Arab League country agrees not to send persons of the Jewish faith into the requester's country. These requirements raise questions not only about the applicability of existing civil rights laws but whether new law is needed to cover these practices.

Applicable Federal civil rights laws are summarized in the testimony of Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, Department of Justice in recent congressional hearings:

"For purposes of this discussion, civil rights problems which may result from the "Arab boycott" can be divided into three categories: discrimination in employment, discrimination in the selection of suppliers or contractors, and discrimination in the treatment of customers.

"*Discrimination in employment.*—The Federal Government is prohibited from discriminating in employment on the basis of race, religion or sex by the Constitution itself. In furtherance of this constitutional principle, Executive Order 11478 explicitly prohibits discrimination in the employment practices of Federal agencies and charges the Civil Service Commission with responsibility for enforcement of the prohibition. In 1972, discrimination in employment practices of Federal agencies was made unlawful by statute through the addition of § 717 to Title VII of the Civil Rights Act of 1964. Enforcement of § 717 rests with each agency, with respect to its own employees, with oversight responsibility in the Civil Service Commission. It should be noted that both Executive Order 11478 and § 717 of Title VII specify that they are not applicable to "aliens employed outside the limits of the United States." The implication of this is that they do apply to United States citizens employed throughout the world.

"With respect to discrimination in employment by private companies and individuals, Title VII of the 1964 Civil Rights Act, as amended, prohibits a broad range of "unlawful employment practices" by any private employer "engaged in an industry affecting commerce who has fifteen or more employees." The prohibited practices include refusal to hire an individual, or any discrimination regarding the terms or conditions of his employment, based on race, color, religion, sex or national origin. Once again the statute contains an exemption "with respect to the employment of aliens outside any State," which

implies that it is applicable to the employment of United States citizens by covered employers anywhere in the world. Prior to March 1974, the Department of Justice had civil enforcement responsibility with respect to this legislation, but it is now lodged in the Equal Employment Opportunity Commission.

"In addition to Title VII, there are special restrictions upon discrimination in the employment practices of persons who hold contracts with the Federal Government or perform federally assisted construction. Executive Order 11246 forbids such employers to discriminate on the basis of race, color, religion, sex, or national origin. Responsibility for securing compliance with the Executive order belongs to the various contracting agencies, subject to the overall authority of the Secretary of Labor. Sanctions include the bringing of lawsuits by the Department of Justice, upon referral by the agency, to enforce the nondiscrimination requirements. It should be noted that the order permits the Secretary of Labor to exempt classes of contracts which involve "work . . . to be . . . performed outside the United States and no recruitment of workers within the limits of the United States." The clear implication is that, in general, contracts to be performed abroad are covered.

"While Title VII and Executive Order 11246 contain the principal Federal restrictions upon discrimination in private employment, some agencies have issued regulations, based upon their particular statutes, concerning employment practices of federally regulated or assisted entities. See, for example, the regulation of the Federal Communication Commission, 47 CFR § 21.307.

"*Discrimination in selection of contractors.*—Title VII and the Executive order discussed above relate only to "employment." They do not prohibit discrimination in the selection of suppliers or subcontracts; nor does any other generally applicable Federal statute or Executive order. With respect to the procurement practices of Federal agencies, the Constitution would presumably prohibit any discrimination, even as between contractors, on the basis of race, color, religion or national origin. With respect to the contracting practices of private firms, however, the Federal civil rights laws impose no constraints which would be applicable to the present situation.

"*Discrimination in the treatment of customers.*—There are no generally applicable Federal civil rights laws which prohibit discriminatory refusal to deal with a particular customer. The closest approach to a broad Federal proscription is Title VI of the 1964 Civil Rights Act, which prohibits the recipients of Federal grants from discriminating against the intended beneficiaries of federally assisted programs on the ground of race, color or national origin—for example, such discrimination by private hospitals which receive Federal money. Some civil rights statutes do impose restrictions, unconnected with the receipt of Federal money, upon particular areas of commerce—for example, Title II of the 1964 Civil Rights Act, relating to public accommodations, and Title VIII of the 1968 Civil Rights Act, relating to housing. There are, however, numerous State laws which impose more general restrictions.

"To summarize: The matter of employment discrimination on the part of private individuals or companies is the subject of a broad Federal statute and also of an Executive order with wide applications.

Responsibility for overseeing enforcement of these laws rests with agencies other than the Department of Justice. With limited exceptions, none of which have significant application to the present problem, Federal civil rights laws do not prohibit private discrimination in the selection of contractors or the treatment of customers." [139]

Whether the U.S. securities laws should be amended to require increased disclosure of a firm's boycott-related activities, on the part of publicly owned and traded firms, has also been the subject of recent legislative proposals. There have also been proposals to amend the Export Administration Act to prohibit specified types of participation by U.S. firms in activities designed to further boycotts against countries friendly to the United States, as well as to strengthen the act's reporting requirements.

Action by banks in forwarding letters of credit or handling other commercial documents containing clauses to the effect that certain boycott practices have been or will be complied with [140] has been the subject of recent State legislation designed to prohibit such participation.[141] One of these statutes states that "no financial institution shall accept any letter of credit or any other document which evidences the transfer of funds or credit which contains any provision which discriminates or appears to discriminate against any person on the basis of race, color, creed, national ancestry, or sex or on ethnic or religious grounds, or of any connection between that person and any other entity.[142] The New York statute that prohibits discriminatory practices based on "race, creed, color, national origin, or sex" in buying, selling or trading, both on the part of persons directly party to such transactions and those who "do any act which enables any . . . person to take such action." [143]

ANTITRUST LAW

The applicability of Federal laws to activities within this country carried out in furtherance of the Arab boycott and the necessity of additional legislation will constitute the major portion of this section. It is worth reemphasizing that the primary boycott—the refusal of the Arab League countries to do business with Israel or to sanction importation of Israeli goods or components—is a sovereign act that is generally thought to be beyond the scope of U.S. laws.[144] What we are concerned with is the tertiary (or extended secondary) boycott by which boycotting Arab League countries attempt to cause U.S. companies not to deal with other U.S. companies which are included in their compilation of "blacklisted" firms.

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[139] U.S. Congress. Senate. Subcommittee on International Finance, Committee on Banking, Housing and Urban Affairs. Foreign Investment and Arab Boycott Legislation. Hearings, 94th Congress, 1st Session on S. 425, Amendment No. 24 Thereto; S. 953, S. 995, and S. 1303, May 22 and 23, 1975. Washington, U.S. Gov't. Print. Off., 1975. Pp. 165–166.

[140] See letter from Representative John E. Moss, chairman, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives of June 8, 1976 to Benjamin S. Rosenthal, chairman, Subcommittee on Commerce, Consumer, and Monetary Affairs, regarding hearings held that date by Chairman Rosenthal's Subcommittee. (To be published.)

[141] See Illinois Public Act 79–965, "Illinois Blacklist Trade Law" (1975 laws).

[142] Illinois Public Act 79–965, *Ibid.*, Sec. 4.

[143] Ch. 662, Laws of New York 1975, amending sec. 296, New York Executive Code.

[144] See Kestenbaum, Lionel. "Antitrust Implications of the Arab Boycott: Per Se Theory, Middle East Politics, and the Bechtel Case." Paper presented to the Conference on Transnational Economic Boycotts and Coercion, Austin, Tex., Feb. 20, 1976, pp. 1–4.

An exception is when "persuasion and pressure" from economic, political, and security relationships, or diplomatic efforts are able to influence the practices.

If two or more U.S. firms were to combine for the purpose either of not dealing with some other firm(s), or of preventing some neutral third-party firms from dealing with the object of the U.S. boycotters' activities, the combination could be termed a true "boycott" in the sense that that term has traditionally been employed in antitrust law.[145]

In *Fashion Originators Guild of America* v. *F.T.C.*,[146] the U.S. Court of Appeals for the Second Circuit said, "A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a boycott, and a boycott is prima facie unlawful." [147] Moreover, it has been held that a boycott produced by "peaceful persuasion is as much within the [Sherman] Act's prohibitions as one where coercion of third parties is present." [148]

Horizontal boycotts (those involving the combination of firms at the same level of production, and generally in competition with each other but for the combination) are generally considered so pernicious that they constitute per se antitrust offenses.[149] The same thing is not generally true of vertical boycotts (those involving restraints imposed by a firm at one level in the marketing chain upon the dealings of one or more firms at a lower level in the chain). But since the formulation of antitrust rules concerning distribution restrictons,[150] the legality of vertical restraints on trade (usually on the distribution of goods) has to be determined within the context of the entire transaction. The nature of a vertical conspiracy will be further addressed below, in the context of the complaint filed by the Department of Justice against the Bechtel Corp.[151] (See *infra*, note 169 and accompanying text).

Virtually indistinguishable from a "boycott" is a "concerted refusal to deal." Since the actions by some U.S. firms in furtherance of the Arab boycott have generally taken the form of refusals to deal with certain other firms that are "blacklisted" by the Arab League countries, the term "refusal to deal" will be employed here. The applicability of antitrust laws to refusal-to-deal activities also entails making "the distinction between unilateral and collaborative or conspiratorial action." [152]

The leading case on whether a businessman may select his customers or supplies on whatever basis it chooses is *United States* v. *Colgate & Co.*[153] *Colgate* is still good law, but some aspects of the *Colgate* doctrine

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[145] See "Contempt Proceedings Against Secretary of Commerce Rogers C. B. Morton." Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, U.S. House of Representatives (94th Cong., 1st sess.). Memorandum of Law at p. 205.

[146] 114 F. 2d 80 (2d Cir. 1940), aff'd, 312 U.S. 457 (1941).

[147] 114 F. 2d at 84.

[148] *Vanderveldе* v. *Put and Call Brokers and Dealers Ass'n*, 344 F. Supp. 118, 141 (S.D.N.Y. 1972).

[149] See *Klors, Inc.* v. *Broadway-Hale Stores, Inc.*, 359 U.S. 207 (1959).

[150] A leading case is *United States* v. *Arnold Schwinn & Co.*, 388 U.S. 365 (1967), in which the court set forth certain conditions under which vertical restraints on the resale of goods would be considered per se unlawful, but left open, to be determined under the Rule of Reason, the legality of other restrictions on absolute freedom of resell.

[151] *United States* v. *Bechtel Corp.*, Civil No. C-76-99 (N.D. Cal., filed Jan. 6, 1976), hereinafter referred to as complaint.

[152] Fulda, Carl H. "Individual Refusals To Deal: When Does Single Firm Conduct Become Vertical Restraint?" 30 Law & Contemporary Problems 590, 603 (1965).

[153] 250 U.S. 300 (1919).

have been circumscribed by later cases. For example, it has been held that repeated refusals to deal may constitute a course of dealing that violates section 5 of the Federal Trade Commission Act [154] as an "unfair method of competition" [155] and that an antitrust violation will be found unlawful if the size and market power of refusing firm are such that its monopoly power is likely to insure compliance with its conditions for dealing.[156]

POLICY OF ANTITRUST LAW

As recently as 1973, the ninth circuit commented that "is it not the primary purpose of the Sherman Act to protect deserving private persons but to vindicate the public interest in a free market." [157] That statement is particularly relevant to an examination of the applicability of U.S. antitrust laws to business refusals to deal with "blacklisted" firms precisely because the refusals have had some adverse impact on individual U.S. businessmen. The language used by the ninth circuit does not reflect a new approach to the policy behind enforcement of the antitrust laws but rather reiterates what has been stated many times before. For example, the Supreme Court in 1947 said that the purpose of the Sherman Act was "to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved." [158]

Lower courts have emphasized the fact that the antitrust laws are to be used to prevent unreasonable restraints of trade or competition [159] and that in the absence of some per se antitrust offense a court must resort to a reasonableness test to determine "whether the [scheme or activity] poses such a pernicious effect on competition that it must be condemned as [a violation]." [160] The observation of another court that the protection of the Sherman Act is available not only to "those in direct competition" with a defendant or to "those who have direct dealings" with a defendant [161] must be read in the context of the holding that only where there is injury to competition, as distinct from injury to competitors, is the perpetrator liable under the antitrust laws.

In seeking to determine whether and under what conditions the antitrust laws should be made applicable to business refusals to deal, the distinction should be made between refusals based on the desire to attain or maintain a monopoly position and those in which the

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[154] 15 U.S.C. § 45.

[155] *F.T.C. v. Beech-Nut Packing Co.*, 257 U.S. 441 (1921); see also, Oppenheim, S. Chesterfield, and Glen E. Weston, Federal Antitrust Laws: Cases and Comments. St. Paul, Minn., West Publishing Co., (1968) pp. 498-533, "Refusals To Deal."

[156] *United States v. Great Atlantic & Pacific Tea Co.*, 67I F. Supp. 626 (E.D. Ill. 1946), aff'd. 173 F. 2d 79 (7th Cir. 1949).

[157] *United States v. Hilton Hotels Corp.*, 467 F. 2d 1000, 1003 (9th Cir. 1973).

[158] *United States v. Yellow Cab Co.*, 332 U.S. 218, 226 (1947); see also *Fashion Originators Guild of America v. F.T.C.*, 312 U.S. 457, 466 (1941).

[159] See *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1 (1911); *United States v. American Tobacco Co.*, 221 U.S. 106 (1911); *Chicago Board of Trade v. United States*, 246 U.S. 231 (1918); *Ace Beer Distributors, Inc. v. Kohn, Inc.*, 318 F. 2d 283 (6th Cir. 1963), cert. denied, 375 U.S. 922 (1963); *United States v. Manufacturers Hanover Trust Co.*, 240 F. Supp. 867 (S.D.N.Y. 1965).

[160] *Checker Motors Corp. v. Chrysler Corp.*, 283 F. Supp. 876, 883 (S.D.N.Y. 1968), aff'd. 405 F. 2d 319 (2d Cir. 1969), cert. denied, 394 U.S. 999 (1969). "It is well settled that the 'restraint of trade' referred to in sec. 1 of the act means only unreasonable restraint of trade in that, as the cases point out, every commercial contract has some restraining effect upon trade." *Ace Beer Distributors, Inc.*, Ibid., 318 F. 2d at 287.

[161] *Turner v. U.S. Gypsum Co.*, 11 F.R.D. 545, 546 (N.D. Ohio 1951).

refusing party merely substitutes one firm for another in his decision to do business with only one of them. As Professor Carl Fulda has observed, paraphrasing the language in *Ace Beer*,[162] in the absence of an attempt to achieve or maintain a monopoly," the *Colgate* right of customer selection gives a businessman the legal right to change trading partners "regardless of any hardship for the [displaced party] and even in the absence of any plausible justification." [163]

While the general term "antitrust laws" has been used throughout this section, the pertinent antitrust statute is the Sherman Act,[164] particularly section 1 and 2. They prohibit contracts, combinations, or conspiracies in restraint of trade or commerce,[165] and monopolization or attempts to monopolize.[166] The language of those sections has generally been construed, to mean unreasonable restraints on trade.[167] But there is a history of case law standing for the proposition that any concerted refusal to deal is per se unlawful.[168]

THE BECHTEL SUIT

The recent antitrust suit filed by the Department of Justice against the Bechtel Corp.[169] and its wholly owned or controlled subsidiaries, referred to in the complaint as the "Bechtel Group," [170] affords an opportunity to evaluate the applicability of the antitrust laws, not only to the specific circumstances that precipitated the *Bechtel* filing, but also to the range of other boycott-related activities as shown by the existing data.

On January 6, 1976, the Department of Justice filed suit against the Bechtel Corp. and its subsidiaries, *United States* v. *Bechtel Corporation*,[171] alleging violations of section 1 of the Sherman Act and accusing the companies of conspiring to restrain trade in this country by reason of agreement(s) not to do business with people and firms (potential Bechtel subcontractors) that have been "blacklisted" by the Arab League countries. The *Bechtel* complaint charges a combination and conspiracy to boycott in unreasonable restraint of trade and commerce.[172] To analyze the complaint, Mr. Kestenbaum, an antitrust specialist, asks, then answers; three questions: "What conspiracy? . . . What boycott? . . . What commerce?"

In paragraphs 7 and 20 of the complaint, the defendants and certain unnamed conspirators are alleged to have participated in the "combination and conspiracy which resulted in an unreasonable restraint of . . . interstate and foreign trade and commerce in violation of section 1 of the Sherman Act." It is Kestenbaum's theory that the unnamed conspirators are the probably unreachable Arab nation-

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[162] 318 F. 2d 283.
[163] Fulda, "Individual Refunds To Deal: . . .," at 597.
[164] 15 U.S.C. 1–7.
[165] 15 U.S.C. 1.
[166] 15 U.S.C. 2.
[167] See note 113, supra, and accompanying text.
[168] *Fashion Originators Guild of America* v. *F.T.C.*, op. cit.; *Klors, Inc.* v. *Broadway-Hale Stores, Inc.*, op. cit.; *Radiant Burners, Inc.* v. *Peoples Gas Light & Coke Co.*, 364 U.S. 656 (1961); *Silver* v. *New York Stock Exchange*, 373 U.S. 341, 347–348 (1963); *United States* v. *General Motors Corp.*, 384 U.S. 127, 145–146 (1966).
[169] Complaint filed Jan. 19, 1976. See note 113, supra.
[170] *Ibid.*, pars. 4 and 5.
[171] The greater part of the ensuing analysis of *Bechtel* owes much to Lionel Kestenbaum, and is, in fact, a summary of the major points raised by him both in his paper and in his oral presentation to participants in the Conference on Transnational Economic Boycotts and Coercion in Austin, Tex., in early 1976. Unless otherwise indicated, quoted material is from Kestenbaum.
[172] Complaint, pars. 20–22.

als: While "it is novel" to apply the principle that one joining an existing horizontal combination of persons or entities who are "beyond the reach of jurisdiction because of foreign governmental action" is himself liable as an antitrust violator to this type of situation, there are analogous cases—to the effect that restrictive agreements made by combinations statutorily exempt from much of the substance of the antitrust laws (for example, agricultural cooperatives, labor unions)[173] with others who do not enjoy the exemption(s), are violative of the antitrust laws—that would support such a charge.[174]

That explanation of the "conspiracy" in the *Bechtel* complaint is but one of three "horizontal conspiracies" advanced.[175] Another is that Bechtel was a party to a conspiracy between non-Arab entities within (and possibly outside) of the United States to conform to the boycott. Such a "conspiracy" would not necessarily require any more than that each of the participants was aware, prior to making its own decision to participate in the boycott, of the actions of others. The third theory is that Bechtel orchestrated a conspiracy among its subcontractors that they not deal with "blacklisted" firms.[176]

Whether a boycott may be justified by its noncommercial purposes and lack of anticompetitive intent is sufficient to immunize a horizontal boycott from per se illegality has been settled in the negative by the Supreme Court.[177] However, it is still being debated by lower Federal courts.[178] The critical factor in determining the antitrust significance of a boycott is whether there is a resulting adverse effect on competition.[179] Thus, the argument that boycott-related activities within the United States, as "basically the result of political conflict," are immune from antitrust attack, is not supportable if the requisite adverse competitive effect is found to be present. In that context, it is likely to be the market power of the boycotting group that determines its susceptibility to a Sherman Act charge. The Department of Justice apparently plans to adduce sufficient evidence of adverse competitive effect occurring as the result of the alleged conspiracy.[180]

Although the per se prohibition against horizontal boycotts is predicated on the perniciousness of any group's ability to "foreclose access to the market or to coerce compliance," the market power of

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[173] See 7 U.S.C. 91–292, the Capper-Volstead Act; 15 U.S.C. 17.

[174] A sample of applicable case law is compiled in note 29 of Kestenbaum's paper.

[175] Actually, Kestenbaum advances four theories of the alleged conspiracy; but one of them—that a vertical conspiracy existed between Bechtel and its subsidiaries—although not impossible to sustain under case law ("The fact that these restraints occur in a setting described . . . as a vertically integrated enterprise does not necessarily remove the ban of the Sherman Act"; "The corporate interrelationships of the conspirators . . . are not determinative of the applicability of the Sherman Act." *United States* v. *Yellow Cab Co.*, op. cit. at 227), does not appear to be favored: "There is no indication that the *Bechtel* complaint proposes to charge an 'intra-enterprise' conspiracy consisting solely of Bechtel and affiliates." See note 28 of Kestenbaum's paper.

[176] The complaint, paras. 2 (b), (c), charges that defendants have required their contractors "to refuse to deal with blacklisted persons" and have furthered this scheme by specifically identifying those on the blacklist.

[177] See note 146, supra.

[178] See Bird, C. Coleman, "Sherman Act Limitations on Noncommercial Concerted Refusals To Deal," 1970 Duke Law Journal 247 (1970); Coons, John E., "Non-Commercial Purpose as a Sherman Act Defense," 56 Northwestern University Law Review 705 (Jan.–Feb. 1962); *Chastain* v. *American Telephone & Telegraph Co.*,—— (D.D.C. 1975).

[179] See note 156, supra, and accompanying text.

[180] The complaint as drafted specifically alleges, inter alia, that "Subcontractors have been denied free and open access in dealing with prime contractors in connection with major construction projects in Arab League countries (par. 23(c)); and that "competition in the export of parts, systems, materials, equipment, and services in connection with major construction projects in Arab League countries has been suppressed" (par. 23(b)).

the boycotting group is important but not determinative. Nevertheless, in paragraphs 8 and 10 of the *Bechtel* complaint, the defendants, "one of the largest prime contractors in the world," are said to have sold their design, engineering, consulting, managing, procurement, equipment and supply delivery, economic and site feasibility study, and construction services to "governments, governmental agencies, large businesses . . . or joint ventures among members of these classes." Paragraph 9 states that of $1 billion worth of major building contracts awarded in the Arab countries in 1974, the defendant—together with 12 other prime contractors—shared all but a small percentage of that amount.

The commerce alleged to have been affected in this country is, as set forth in paragraph 23 of the complaint, that concerning materials and systems unable to be supplied by "blacklisted persons located in the United States . . . in connection with major construction projects in Arab League countries." Since the commerce allegedly affected is within this country and since actions taken outside the United States jurisdiction have effects within the country that may create liability under U.S. law the act of state doctrine would dnot normally deter U.S. judicial action.[181]

APPLICABILITY OF ANTITRUST LAW TO THE ARAB BOYCOTT

The subcommittee's search of the subpenaed Export Administration Act reports revealed few cases of concerted refusals to deal involving the requisite facts to warrant antitrust sanctions.[182] If these data accurately reflect the complete picture of boycott activities, they suggest that the Sherman Act may be able to resolve only a few of the types of activities potentially damaging to small business. Even in instances where antitrust prosecution might be legally supportable, there are those such as Professor Kestenbaum who argue that the use of the antitrust statutes might not be as desirable, from a policy viewpoint, as "legislation or . . . executive action under the laws applicable to foreign trade.[183]

Mr. Kestenbaum sums up the situation this way:

"The institution of the *Bechtel* case does not, however, clear up the confusion and inconsistency in government policy. U.S. business (and its counsel) are being told two contradictory things. On one hand, they are told to develop trade, to promote a U.S. industrial presence in Arab countries. Furthermore, by statements of the President and other officials, the message is in effect conveyed that industry is expected to go along with the Arab boycott in order to accomplish these ends. On the other hand, companies are being more and more belabored and assailed for accommodating to that Arab policy. The

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[181] See, for example, *United States v. Aluminum Co. of America*, 148 F. 2d 416 (2d Cir. 1945): deciding that an agreement, entered into outside the United States, concerning the importation into this country of aluminum, did violate sec. 1 of the Sherman Act. Judge Learned Hand concluded that despite the fact that "We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States . . . it is settled law . . . that any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its border that has consequences within its borders which the state reprehends. . . ." 148 F. 2d at 443.

[182] A "concerted refusal to deal" in this context refers to agreements between two or more parties to refuse to do business with a third firm.

[183] Kestenbaum, "Antitrust Implication of the Arab Boycott: * * *," at 27.

Bechtel suit and other steps are so viewed. They are uncertain signs, however, because of the widely-published reports of unresolved intra-government conflict. More to the point, it is simply not possible to satisfy the contradictory directives.

"In this context, the *Bechtel* case has the additional problem of any antitrust suit with novel aspects—which is that it is likely to remain unresolved for an extended period of time. Even the threat of antitrust liability in this situation—which would include possible treble damages to injured parties—can stimulate some U.S. firms to prudently resist adherence to secondary boycott agreements. But if this policy objective is desirable, it would seem more efficient and effective to achieve it by legislation or by executive action under the laws applicable to foreign trade." [184]

[184] *Ibid.*, p. 25, with author's footnotes omitted.

SELECTED BIBLIOGRAPHY

American Jewish Congress. "*American Law* v. *The Arab Boycott*." New York, May 1975.

Askari, Hossein. "The International Trade Implications of the Oil Cartel." Paper presented to the Conference on Transnational Economic Boycotts and Coercion, Austin, Texas. February 19, 20, 1976. 12 "Texas International Law Journal" 1, 1976.

Baker, James A. III. "The Commerce Department and the Arab Boycott." Paper submitted to the Conference on Transnational Economic Boycotts and Coercion, Austin, Texas, February 19, 20, 1976.

Bilder, Richard B. Comments delivered to the Conference on Transnational Economic Boycotts and Coercion, University of Texas School of Law, Austin, Texas, February 19, 20, 1976, 12 "Texas International Law Journal" 1, 1976.

Bird, C. Coleman. "Sherman Act Limitations on Noncommercial Concerted Refusals to Deal." 1970 "Duke Law Journal" 247, 1970.

Blum, Yehuda Z. "Economic Boycotts in International Law." Paper presented to the Conference on Transnational Economic Boycotts and Coercion, University of Texas, Austin, Tex., February 19, 20, 1976, 12 "Texas International Law Journal" 1, 1976.

Coons, John E. "Non-Commercial Purpose as a Sherman Act Defense." 56 "Northwestern Law Review" 705 January–February 1962.

Davidow, Joel. "The Effect of American Antitrust on International Competition." Remarks by Chief, Foreign Commerce Section, Antitrust Division, Department of Justice before Workshop on Antitrust and Multi-National Operations of The Fifteenth One-Day Conference of the Conference Board. New York City, March 4, 1976.

Export Administration Act Regulations, Promulgated Pursuant to 50 U.S.S. App. 2403. 15 CFR, Chapter 369; 40 Federal Register 54769, November 26, 1975.

Fulda, Carl H. "Individual Refusals to Deal: When Does Single Firm Conduct Become Vertical Restraint? 30 "Law and Contemporary Problems" 590, 1965.

Guzzardi, Walter J. "That Curious Barrier on the Arab Frontiers." Fortune, Vol. XCII, No. 1, July 1975, p. 82–85, 168, 170, 172, 175.

Kestenbaum, Lionel. "Antitrust Consequences of the Arab Boycott." Paper presented to the Conference on Transnational Economic Boycotts and Coercion, University of Texas School of Law, Austin, Tex., February 19, 20, 1976, 54 "Texas Law Review" 7, 1976.

Lowenfeld, Andreas F. ". . . Sauce for the Gander." Paper presented to the Conference on Transnational Economic Boycotts and Coercion. Austin, Texas, February 19, 20, 1976. 12 "Texas International Law Journal" 1, 1976.

Mark, Clyde R. "The Arab Boycott of Israel: A Briefing Paper." Washington, D.C., Library of Congress, Congressional Research Service, March 10, 1975.

Metzger, Stanley D. "Cartels, Combines, Commodity Agreements and International Law." Paper presented to the Conference on Transnational and Economic Boycotts and Coercion. Austin, Texas, February 19, 20, 1976, 11 "Texas International Law Journal" 3, 1976.

Oppenheim, S. Chesterfield and Weston, Glen E. "Federal Antitrust Laws: Cases and Comments." St. Paul, Minn., West Publishing Co. 1969: Chapter 10.

Rosenthal, Douglas E. "Antitrust Jurisdiction and the Activities of Foreign Governments." Remarks by Assistant Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, before the World Trade Institute. New York City, January 29, 1976.

Roth, Allan. "Corporation and Securities Law: Boycott and Petrodollars." Paper delivered at the Conference on Transnational Economic Boycotts and Coercion, University of Texas, February 19, 20, 1976. Not published.

Schatz, Barbara. "States Civil Rights Laws Affecting the Boycott." Paper de-

livered at Transnational Economic Boycotts and Coercion, University of Texas School of Law, Austin, Texas, February 19, 20, 1976. Not published.

Schwarts, Louis B. "The Arab Boycott and American Responses." Paper delivered on Conference on Transnational Economic Boycotts, and Coercion, University of Texas School of Law, Austin, Texas, February 19, 20, 1976, 54 "Texas Law Review" 6, 1976.

Timberg, Sigmund. "Sovereign Immunity and Act of State Defense: Their Availability Against Transnational Boycotts and Economic Coercion." Delivered at Conference on Transnational Economic Boycotts and Coercion, University of Texas School of Law, Austin, Texas, February 19, 20, 1976, 54 "Texas Law Review" 7, 1976.

U.S. v. *Bechtel Corp.* Complaint filed by Department of Justice in U.S. District Court for Northern California, January 6, 1976 (No. C–76–99).

U.S. Congress. House. Committee on Banking and Currency. "Extension of the Export Control Act." 89th Congress, 1st Session. Washington, D.C., U.S. Gov't. Print. Off., 1965: H. Rep. 89–434.

——— Committee on Banking and Currency Subcommittee on International Trade. "Continuation of Authority for Regulation of Exports and Amending the Export Control Act." Hearings, 89th Congress, 1st session. Washington, D.C., U.S. Gov't. Print. Off., 1965.

——— Committee on International Relations. Subcommittee on International Trade and Commerce. "Discriminatory Pressure on U.S. Business." Hearings, 94th Congress, 1st session. Washington, D.C., U.S. Gov't. Print. Off., 1975.

——— Committee on Interstate and Foreign Commerce. Subcommittee on Oversight and Investigations. "Contempt Proceedings Against Secretary of Commerce Rogers C. B. Morton." Hearings, 94th Congress, 1st session. Washington, U.S. Gov't. Print. Off., 1975.

U.S. Congress. Senate. Committee on Banking and Currency. "Export Control Act of 1949." 89th Congress, 1st session. Washington, D.C., U.S. Gov't. Print. Off., 1965. S. Rep. 89–363.

——— Committee on Banking and Currency. Subcommittee on International Finance. "Amend Section 2 of the Export Control Act of 1949." 89th Congress 1st session. Washington, D.C., U.S. Gov't. Print. Off., 1965. iv.

——— Committee on Banking, Housing, and Urban Affairs. "Foreign Boycotts and Domestic and Foreign Investment Improved Disclosure Acts of 1975." Report to Accompany S. 953, 94th Congress, 2d session. Washington, D.C. U.S. Gov't. Print. Off., 1976. S. Rep. 94–632.

——— Committee on Banking, Housing and Urban Affairs. Subcommittee on International Finance. "Foreign Investment and Arab Boycott Legislation." Hearings, 94th Congress, 1st session. Washington, D.C., U.S. Gov't. Print. Off., 1975.

——— Committee on the Judiciary. Subcommittee on Antitrust and Monopoly. International Aspects of Antitrust Laws. Hearings, 93d Congress, 1st and 2d sessions. Washington, D.C., U.S. Gov't. Print. Off., 1974.

White, H. Blair and Perlberg, Jules M. "The Sherman Act in the Political Arena." 3 Corporate Practice Commentator 1 (February 1962).

Zafren. Daniel Hill. General Overview of the Validity of the Arab Boycott under International Law. Washington, D.C., Library of Congress, Congressional Research Service, March 26, 1976.

APPENDIXES

APPENDIX A

CONTEMPT PROCEEDINGS AGAINST SECRETARY OF COMMERCE, ROGERS C. B. MORTON [1]

SUMMARY

(Submitted by John E. Moss, Chairman, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce)

INTRODUCTION

On November 11, 1975, the Subcommittee on Oversight and Investigations, by a vote of 10 to 5, approved the following resolution:

"*Resolved*, That the Subcommittee finds Rogers C. B. Morton, Secretary, United States Department of Commerce, in contempt for failure to comply with the subpoena ordered by the Subcommittee and dated July 28, 1975, and that the facts of this failure be reported by the Chairman of the Subcommittee on Oversight and Investigations to the Committee on Interstate and Foreign Commerce for such actions as the Committee deems appropriate."

This action was taken because Secretary Morton has repeatedly refused to comply with a Subcomittee subpoena for Arab boycott reports in the possession of Secretary Morton. These reports are needed by the Subcommittee in order to determine the nature and scope of the Arab trade boycott.

The Subcommittee's first request to the Commerce Department was on July 10, 1975. Secretary Morton wrote to the Subcommittee on July 24, 1975, refusing to furnish the requested information. On July 28, the Subcommittee issued a subpoena duces tecum for those reports. On August 22, Secretary Morton wrote to the Subcommittee stating that he would not comply with the subpoena. The Subcommittee wrote Secretary Morton on September 2 to remind him of the Subcommittee's jurisdiction and need for the information and to advise him that he would be called upon to appear before the Subcommittee with the documents.

The Secretary's explanation for his noncompliance on those occasions and since, is that he believes Section 7(c) of the Export Administration Act—the same act that requires the reports to be filed—also requires the Secretary not to disclose them to Congress.

On September 2, and on numerous occasions since, the Subcommittee explained to the Secretary why his interpretation is at variance with the terms of the statute and also inconsistent with the legislative and oversight duties granted to Congress under Article I of the Constitution. Secretary Morton sought, and on September 4 received, an opinion from the Attorney General supporting his position for not complying with the Subcommittee's subpoena.

Secretary Morton appeared before the Subcommittee on September 22 pursuant to the July 28 subpoena. Secretary Morton acknowledged the Subcommittee's need and jurisdiction for its inquiry into the impact of the boycott. Asked if he had brought the subpoenaed documents with him, Secretary Morton answered that he had not brought the documents and again asserted that the confidentiality section in the reporting Act precluded him from compliance with the Subcommittee's subpoena.

The Subcommittee carefully considered Secretary Morton's position during four days of open hearings. Secretary Morton was present on September 22 and on November 11. On October 21 and 22, the Subcommittee heard from three leading constitutional law scholars who discussed Secretary Morton's obligations.

The Subcommittee considered alternatives to contempt proceedings. On September 22, Congressman Rinaldo suggested at a Subcommittee hearing that the

[1] This summary was prepared for use by subcommittee staff in further contempt proceedings against Secretary of Commerce Morton, Dec. 5, 1975.

Subcommittee bring the controversy before the courts by seeking a declaratory judgment. The Chairman answered that such relief was not possible under existing law. The Chairman sought, and on September 29 received, a memorandum from the American Law Division of the Library of Congress which carefully analyzed that question and concluded on the basis of Supreme Court cases involving similar controversies that the Court would not find it justiciable. On another occasion, the Subcommittee considered in an open hearing a compromise consisting of obtaining the information with a promise that it would not be made public. However, it is the position of a majority of the Subcommittee that it would not be responsible for the Subcommittee to make a decision on what to do with the reports until after it has carefully reviewed them. Further, allowing the Executive to tell Congress what information it can have or under what conditions, would (absent a clear waiver of congressional authority) do violence to the doctrine of separation of powers and the oath of office.

Thus, since July 10, 1975, the Subcommittee has been denied information that it needs for its investigation.

ARAB BOYCOTT INVESTIGATION

Although the Arab trade boycott has been in existence for at least 20 years, its impact has recently intensified as the result of increased wealth in the Arab world due to petrodollars in large part gained from the pockets of American consumers. Generally what one country chooses to do with another is its business, but the problem with the Arab boycott is its apparently unique secondary aspects that serve to impose its practices on citizens and businesses in this country.

NATURE OF THE BOYCOTT

The Arab trade boycott against Israel in effect takes two forms. First, Arab nations refrain from doing business with Israel. Second, Arab nations require other countries to join their boycott as a condition from doing business with Arabs. The secondary boycott involves the coercion of U.S. companies to engage in anti-competitive and discriminatory practices, a matter of central importance to Congress.

American firms are being required (1) to refrain from doing business with Israel, (2) with other American firms who do business with Israel, or (3) with firms which have United States citizens of the Jewish faith as members of their boards of directors or with controlling stock interests. For example, one Arab concern required compliance with the following statement in order to do business: "And we solemnly declare that we, or this company, are not Jewish, nor controlled by Jews."

Not all of the boycott causes are as blatant in expressing their ethnic or religious biases. Many of the boycott clauses examined by the Subcommittee state: ". . . and the offeree otherwise agrees to comply with the boycott."

UNIQUENESS OF THE BOYCOTT

There have of course been other multilateral trade boycotts. The Arab boycott is unique in its secondary aspects. For example, when the United States boycotted Cuba, it did not require other countries to join the boycott against Cuba as a condition for doing business in the United States. Further, a boycott on the basis of religious preference is a violation of federal law, raising serious questions under both antitrust and civil rights statutes.

DOMESTIC LAWS AND THE BOYCOTT

The boycott is clearly contrary to American principles of free trade and freedom from religious discrimination. It also appears violative of antitrust and other federal laws, laws within the jurisdiction of the Committee on Interstate and Foreign Commerce.

The Federal Trade Commission and Securities Exchange Acts are within the jurisdiction of the Interstate and Foreign Commerce Committee. The Federal Trade Commission Act prohibits "unfair or deceptive acts or practices in commerce" and "unfair methods of competition." Similarly, the Committee has jurisdiction over the Securities Exchange Act which provides that any "manipulative or deceptive device or contrivance" relating to the sale of securities is

unlawful. Under the regulations of the Securities and Exchange Commission, public corporations are required to afford stockholders "full disclosure" of information material to a company's financial situation, a duty which would include disclosure of a corporation's response to a boycott request.

OTHER ASPECTS OF SUBCOMMITTEE INQUIRY

The Subcommittee has obtained information that some domestic corporations have lost substantial export business as the result of having been placed on the Arab boycott list. For example, the RCA Corporation reports that they did about $10 million worth of export business annually with Arab countries prior to being placed on the boycott "blacklist." RCA states it had every reason to believe its export sales to the Arab world would rise above the $10 million level. However, since being placed on the boycott list, RCA's business with Arab countries has dropped to less than $1 million for a loss in sales of at least $9 million annually.

In the course of the investigation, which began in April, the Subcommittee has come into possession of documents evidencing efforts by foreign firms and American firms to cause other American firms or individuals to agree to boycott provisions. The Subcommittee has also obtained copies of offers to do business from Arab countries that were circulated in this country by the Department of Commerce despite the fact that these offers had boycott clauses and despite the fact that such a boycott is violative of the policy expressed in the Export Administration Act (50 U.S.C. App. 2402).

On November 26, 1975, Secretary Morton announced that the Commerce Department will no longer cidrculate tenders, bids, or offers containig boycott requests. The need for Congress to determine if the Commerce Department is now fully carrying out statutory policy opposing trade boycotts remains.

The Commerce Department has also, since the Subcommittee's action finding Secretary Morton in contempt, revised its regulations to prohibit exporters from taking action that has the effect of furthering restrictive trade practices which discriminate against United States citizens or firms on the basis of race, color, religion, sex, or national origin. However, the Department has failed to amend its regulations to deal with the most prevalent type of discriminatory practice, the secondary boycott of American citizens or firms which do business with the State of Israel or who "are otherwise on the boycott list." Thus, restraint of trade practices in this country which are contrary to the Congressional mandate of the Export Administration Act, as well as implied forms of anti-semitism, will remain untouched by the new regulations.

INFORMATION SUBPENAED

The information subpenaed from Secretary Morton are reports about the Arab trade boycott against Israel which are filed by American firms pursuant to the Export Administration Act. These reports must be filed by an American firm under penalty of law every time it receives a request to participate in the boycott.

The Subcommittee needs this information in order to determine whether Federal laws related to the Arab boycott activities are effective as well as whether new legislation is needed. With the President's recent announcement of changes in Federal regulations and possible legislation to address the boycott issue, the need for this information is even more critical. For clearly there is no way the American public or the U.S. Congress can determine whether the President's new directive (made pursuant to the Export Administration Act) is being complied with so long as the Commerce Secretary's assertion of a right to limit Congressional access stands.

SECRETARY MORTON'S DEFENSE

In deciding not to comply with the Subcommittee's subpoena, Secretary Morton cited Section 7(c) of the Export Administration Act as his reason for not complying with a subpoena issued to him by the Subcommittee for the Arab boycott reports. Section 7(c) of the Act provides:

"No department, agency, or official exercising any function under this Act shall publish or disclose information obtained hereunder which is deemed con-

fidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest."

Secretary Morton argues that he would violate that Section if he complied with the Subcommittee's subpoena, and he has received an opinion from the Attorney General confirming his view.

SUBCOMMITTEE'S REPLY

However, the Subcommittee has repeatedly pointed out to Secretary Morton that Section 7(c) does not in any way refer to the Congress, and that no reasonable interpretation of that Section could support the position that Congress by implication had surrendered its legislative and oversight authority under Article I of the Constitution. If Congress were to surrender its powers in a statute, it would have to do so expressly and not, as Secretary Morton argues, by implication or silence. The Subcommittee has received the opinions of four constitutional law scholars who say that the Secretary's view is legally untenable.

IMPLICATIONS OF SECRETARY MORTON'S NONCOMPLIANCE

If Secretary Morton's argument for not complying with a valid Congressional subpoena is allowed to remain unchallenged, it will establish a dangerous precedent which would be more pernicious than the doctrine of executive privilege. According to a recent Library of Congress report, if Secretary Morton's theory is adopted, Congress may be precluded from access to information compiled pursuant to more than a hundred statutes similar to the statute cited by Secretary Morton. These statutes apply to 11 cabinet departments and at least 14 other agencies, involving a wide spectrum of data. The Congressional powers of oversight and investigations would be seriously crippled.

CONGRESSIONAL POWERS OF OVERSIGHT AND INVESTIGATIONS

Congress has a duty to ascertain whether laws are being enforced before it considers amending those laws or enacting new laws. This power, having antecedents in the history of the British Parliament, has been upheld by the United States Supreme Court from 1791 to 1975. The Court has stated:

"The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic, or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Watkins* v. *United States*, 354 U.S. 178, 187 (1957).

CONGRESSIONAL POWER TO ISSUE SUBPOENAS

To oversee the administration of federal laws and to investigate matters which may need legislation, Congress has the power to use compulsory process; i.e., issue subpoenas for documents, compel testimony (except when it would be self-incriminating), and have such testimony provided pursuant to laws providing for prosecution of perjury. The rationale for compulsory process is summarized by the Supreme Court in *McGrain* v. *Daughtery*, 273 U.S. 135, 175 (1927):

"Experience has taught that mere requests for information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed . . ."

CONGRESSIONAL CONTEMPT POWERS

The Supreme Court has upheld Congressional contempt powers because: "Here, we are concerned, not with an extension of Congressional privilege, but with vindication of established and essential privilege of requiring the production of evidence. For this purpose, the power to punish for contempt is an appropriate means." *Jurney* v. *MacCracken*, 249 U.S. 149, 159 (1935).

DISCLOSURE OF DOCUMENTS

It is impossible to make a wise decision concerning the issue of whether or not to release the reports to third parties until after the Subcommittee has received the reports and examined them carefully. The Subcommittee has not made any decision to release or not release the subpoenaed documents. Accordingly, it would not be responsible, Chairman Moss has said, for the Subcommittee to agree to a condition imposed by the Secretary without studying the documents.

The Subcommittee has obtained by subpoena thousands of documents concerning natural gas producer reporting practices—documents of a highly sensitive nature. None has been disclosed. No Subcommittee subpoenaed document has ever been improperly disclosed.

SEPARATION OF POWERS

The Supreme Court in May of this year said that Congressional investigations, once shown to be in the sphere of legislation, "shall not be questioned in any other place." (*Eastland* v. *United States Servicemen's Fund*, 421 U.S. 491, 501.) The Court said that the Constitution's Speech or Debate Clause is an absolute bar to interference. The rationale for that decision is rooted in the notion of a separation of powers. As a Federal court (in *Fishler* v. *McCarthy*, 117 F.Supp. 643 (S.D.N.Y.), aff'd 218 F.2d 164 (2d Cir. 1954) (*per curiam*)) explained:

"It is entirely clear . . . that neither this nor any other court may prescribe the subjects of Congressional investigation. Were a court empowered to limit in advance the subjects of Congressional investigations, violence would be done to the principle of separation of powers upon which our entire political system is based." (at 648)

* * * * * * *

"[T]he legislature cannot be compelled to submit to the prior approval and censorship of the judiciary before it may ask questions or inspect documents through its investigating subcommittees, or even before it enacts legislation. . . ." (at 650)

Just as the judiciary is barred from impeding duly authorized Congressional inquiries, so is the Executive barred from doing the same, for Article I clearly vests the powers of legislation, and related investigations, in the Congress.

THE SECRETARY OF COMMERCE,
Washington, D.C. December 8, 1975.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Oversight and Investigation, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I refer to your letter of November 26, 1975, and subsequent discussions wherein you stated that the Subcommittee's handling of the reports which are the subject of your Subcommittee's subpoena would be nothing less than responsible. I appreciate your assurance of this fact and believe that your assurance offers a possible means of resolving this dispute.

I will deliver the reports in question to the Subcommitte promptly upon receipt of your assurance that the Subcommittee will take adequate measures to insure that the confidentiality of the materials will be safeguarded.

Sincerely,

ROGERS C. B. MORTON.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 8, 1975.

Hon. ROGERS C. B. MORTON,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I have received your letter of December 8, 1975, and noted your continued reservations concerning the confidential handling of the materials which are the subject of our subpoena of July 28, 1975.

Because of the duty that you feel is imposed upon you by Section 7(c) of the Export Administration Act, the materials will be received in executive session and the Committee's handling of the materials will be fully responsible and will be in consonance with their asserted confidentiality.

Sincerely,

JOHN E. MOSS, *Chairman,*
Oversight and Investigations Subcommittee.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Wash[illegible]on, D.C.

RESOLUTION OF THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGA[illegible]S OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Resolved, That pursuant to Rule XI(k), the Committee determines that the testimony required by subpoena *duces tecum* from the Secretary of Commerce falls within the purview of this Section of the Rules and authorizes the acceptance by the Chairman of the subpoenaed documents as though received in executive session, and be it further

Resolved, That the documents will remain subject to Rule XI(k).

APPENDIX B

AUGUST 11, 1975.

Memorandum for: Richard E. Hull, Assistant General Counsel/DIBA.
From: Peter B. Hale, Director, Commerce Action Group for the Near East/CAGNE.
Subject: Department policy on dissemination of trade opportunities containing references to Arab boycott requirements.

A question has arisen as to the appropriateness (and legality) of the U.S. Government disseminating to U.S. firms bid invitations from Arab countries which contain references to the Arab boycott of Israel.

The issue of Commerce dissemination of trade opportunities and bid specifications containing boycott references considerably pre-dates passage of the anti-boycott amendment to the Export Control Act in 1965. In 1961, Commerce and State arrived at a common position on the issue, but State's Congressional Relations people killed it before it went into effect out of concern that it might endanger passage of the trade bill. The key elements of that position were:

1. Posts would continue to forward to Commerce trade opportunities or bid invitations containing boycott references, but the boycott reference would be specifically flagged in the transmission.

2. Commerce would publish such opportunities in International Commerce, but with no reference at this point to the boycott requirement. It was not deemed proper to deny U.S. exporters access to trade opportunities merely because they had such a clause.

When U.S. firms asked for bid specifications or other information as the result of publication of the opportunity, Commerce would supply the complete information, including the boycott reference. Again, the rationale was that we would not properly serve the interests of U.S. business by denying it the complete conditions of the bid invitation.

3. Posts would be instructed to return to the originator any invitation containing any wording implying racial or religious discrimination with the message that such invitations would not be accepted by the post and would not be publicized by the Department of Commerce.

The issue was raised again in January, 1964. Commerce proposed the same procedure, but also proposed to attach a brief statement of U.S. policy on the boycott to each set of specifications having boycott clauses sent to U.S. firms. State at that time was opposed to attaching the statement.

Apparently the issue was finally resolved shortly after passage of the anti-boycott amendment in 1965. Letters from the Director, Near East-South Asia Division, to Cairo and Beirut in December 1965 stated the above procedure as being in effect (but without the requirement that Embassies flag boycott clauses). Also in that time frame a statement of U.S. policy was developed and printed to accompany specifications sent to requesters. We do not know how long the statement remained in use but apparently it fell by the wayside somewhere. We have checked with BDC and MEPD, which forward specifications on bid opportunities, and they have no recent memory of such a statement being used. The same applies for CAGNE. This is probably not an issue where the TOPS Program is concerned, since the telegraphic trade opportunity format would not contain boycott references and since TOPS sends bid specifications to BDC or MEPD for handling.

The issue is with us again, it appears. The Economic Minister of the Israeli Embassy, Ze'ev Sher, raised it at a meeting on August 7 with Deputy Assistant Secretary of State for NEA Sidney Sober. Sher presented Sober with a copy of a set of specifications for an Iraqi housing project containing a boycott clause which had been sent to a U.S. firm. From the brief description we got, we are reasonably certain that the specifications were provided by CAGNE. We do not feel any vulnerability about this, since it is in accord with past policy and is a reasonable response to the legitimate needs of the business community. Neverthe-

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less. Sher made an issue of whether it was appropriate for a U.S. Government agency to be disseminating boycott information.

Perhaps it would be useful to have another review within the Department and then with State, and a restatement of policy on the handling of trade opportunities from Arab countries containing boycott clauses. There are essentially two issues in such a review:

1. Is the policy of making nonreference to boycott requirements in the initial dissemination of the trade opportunity, but providing the full details to a firm requesting specifications, an appropriate one? CAGNE believes that it is, since there is no U.S. legal prohibition on a firm complying with boycott requests.

2. Should we review the practice of attaching a statement of U.S. boycott policy when specifications containing boycott references are made available to firms requesting them? CAGNE believes that from a policy standpoint, such a statement might be a useful device for helping to defuse the current situation.

In advising State on August 11 that we were continuing with the policy in effect since 1965 pending a possible policy review and restatement, I learned that State is rather seriously disturbed by the implications of the U.S. Government disseminating any documents containing boycott requests in view of the consideration being given in Congress to more restrictive legislation against the boycott. At least the regional affairs people in NEA appear to be developing the conclusion that such action is inconsistent with the U.S. policy of opposition. It seems likely that State may press for some change in our practice (e.g., the deletion of the boycott clause from specifications given to business firms) as a further effort to head off damaging legislation.

The above suggests that early attention to the issue is desirable. I believe that it would be appropriate to convene the Department's boycott Task Force to develop a Departmental position and try to get an agreement with State in the event that the issue should come up in the context of the general review of policy options now going on in the White House.

3. Posts would be instructed to return to the originator any invitation containing any wording implying racial or religious discrimination with the message that such invitations would not be accepted by the post and would not be publicized by the Department of Commerce.

The issue was raised again in January, 1964. Commerce proposed the same procedure, but also proposed to attach a brief statement of U.S. policy on the boycott to each set of specifications having boycott clauses sent to U.S. firms. State at that time was opposed to attaching the statement.

Apparently the issue was finally resolved shortly after passage of the anti-boycott amendment in 1965. Letters from the Director, Near East-South Asia Division, to Cairo and Beirut in December 1965 stated the above procedure as being in effect (but without the requirement that Embassies flag boycott clauses). Also in that time frame a statement of U.S. policy was developed and printed to accompany specifications sent to requesters. We do not know how long the statement remained in use but apparently it fell by the wayside somewhere. We have checked with BDC and MEPD, which forward specifications on bid opportunities, and they have no recent memory of such a statement being used. The same applies for CAGNE. This is probably not an issue where the TOPS Program is concerned, since the telegraphic trade opportunity format would not contain boycott references and since TOPS sends bid specifications to EDC or MEPD for handling.

The issue is with us again, it appears. The Economic Minister of the Israeli Embassy, Ze'ev Sher, raised it at a meeting on August 7 with Deputy Assistant Secretary of State for NEA Sidney Sober. Sher presented Sober with a copy of a set of specifications for an Iraqi housing project containing a boycott clause which had been sent to a U.S. firm. From the brief descripiton we got, we are reasonably certain that the specifications were provided by CAGNE. We do not feel any vulnerability about this, since it is in accord with past policy and is a reasonable response to the legitimate needs of the business community. Nevertheless, Sher made an issue of whether it was appropriate for a U.S. Government agency to be disseminating boycott information.

Perhaps it would be useful to have another review within the Department, and then with State, and a restatement of policy on the handling of trade opportunities from Arab countries containing boycott clauses. There are essentially two issues in such a review:

1. Is the policy of making nonreference to boycott requirements in the initial dissemination of the trade opportunity, but providing the full details to a firm requesting specifications, an appropriate one? CAGNE believes that it is, since there is no U.S. legal prohibition on a firm complying with boycott requests.

2. Should we review the practice of attaching a statement of U.S. boycott policy when specifications containing boycott references are made available to firms requesting them? CAGNE believes that from a policy standpoint, such a statement might be a useful device for helping to defuse the current situation.

In advising State on August 11 that we were continuing with the policy in effect since 1965 pending a possible policy review and restatement, I learned that State is rather seriously disturbed by the implications of the U.S. Government disseminating any documents containing boycott requests in view of the consideration being given in Congress to more restrictive legislation against the boycott. At least the regional affairs people in NEA appear to be developing the conclusion that such action is inconsistent with the U.S. policy of opposition. It seems likely that State may press for some change in our practice (e.g., the deletion of the boycott clause from specifications given to business firms) as a further effort to head off damaging legislation.

The above suggests that early attention to the issue is desirable. I believe that it would be appropriate to convene the Department's boycott Task Force to develop a Departmental position and try to get an agreement with State in the event that the issue should come up in the context of the general review of policy options now going on in the White House.

APPENDIX C

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

SUMMARY OF DOLLAR VALUES OF TRANSACTIONS REPORTED TO THE DEPARTMENT OF COMMERCE UNDER 50 U.S.C. 2032.4(d) (THE EXPORT ADMINISTRATION ACT RESTRICTIVE TRADE PRACTICES REPORTING REQUIREMENT)

By Daniel Melnick and Royce Crocker, Analysts, Government Division, August 4, 1976)

The following constitutes a summary of the dollar values of transactions reported to the Department of Commerce by exporters as having involved requests for restrictive trade practices during the period January 1, 1974 to December 31, 1975. Copies of the report forms were obtained by the Subcommittee under subpoena for the period of January 1, 1974 to December 5, 1975 from the Department of Commerce. Subsequently, the Department of Commerce sent the report forms for the period of December 5, 1975 to December 31, 1975 to the Subcommittee without need of a subpoena. The report forms were analyzed and tabulated by the Subcommittee staff. This analysis assumes that the file of report forms supplied by the Department of Commerce and processed by the Subcommittee contains all of the reports filed and that there were no duplicates. The Subcommittee utilized numerous procedures to eliminate duplicates and insure the correct coding of the reports.[1]

The Department of Commerce submitted these reports in two groups (1) reports filed with the Department of Commerce in the period January 1, 1974 to December 5, 1975—hereafter called period one—were submitted to the Subcommittee in December; (2) reports filed with the Department of Commerce during the period December 5, 1975 and December 31, 1975—hereafter called period two—were submitted to the Subcommittee in February.

The reports filed during period two were filed pursuant to the revised regulations which took effect on December 1, 1975. Conesquently, these forms were filed by "service organizations," including banks, freight forwarders and insurance companies, as well as exporters. Furthermore, the volume of reports filed in that period (a total of approximately 14,000 documents) made the Subcommittee's tabulation of every report impractical.

In response to a request from the Subcommittee, the Congressional Research Service devised a probability sampling scheme for the use of the Subcommittee staff which would allow accurate estimation of the correct dollar amounts represented by various classes of reports filed by exporters. Dr. Benjamin Tepping (retired chief of the U.S. Bureau of the Census Research Center for Measurement Methods) advised CRS and the Subcommittee on the correct estimation methods to use for calculating the dollar values based on the sample drawn.

For the purposes of this analysis, the period two forms were processed in the following way:

The forms were sorted into three categories; (*a*) Those which were not filed by exporters (these were not included in the analysis); (*b*) those which had entries valued at $50,000 or greater (all of these entries were tabulated); and (*c*) those which had entries valued at less than $50,000 (a probability sample of these entries was drawn.).[2]

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[1] See Appendix B for a description of the verification procedures used.
[2] See Appendix A for a description of the sampling and estimation techniques used.

This procedure resulted in dollar values for three groups of reports filed by exporters:

1. Dollar values of those reports filed prior to December 5, 1976; these values are based on a total tabulation performed by the Subcommittee staff.[3]

2. Dollar values of those reports (submitted after December 5, 1975) with entries valued at $50,000 or over; these values are based on a total tabulation performed by staff of the Subcommittee.[4]

3. Estimated dollar values of those reports with entries valued at less than $50,000; these values are based on a probability sample of the entries valued at less than $50,000. The sample was selected by the Subcommittee according to a sampling design constructed by the Congressional Research Service.

SUMMARY OF DOLLAR VALUE

An examination of the results (as detailed in Table I) indicates the following:

All entries in our three groups of reports were valued at a total of over $4.5 billion.

Of these, entries reporting transactions pursuant to a sales document were valued at $1.5 billion.

Transactions in which trade opportunities were reported were valued at over $2.4 billion.

A total of over $1.3 billion worth of transactions reported in the period December 5, 1975 to December 31, 1975 were reported as having "complied" with the request for a restrictive trade practice, compared with only $764 million worth of transactions reported as having "complied" in the period January 1, 1974 to December 5, 1975. This difference is likely due to the fact that the regulations were changed on October 1, 1975 to make reporting of compliance mandatory. In the period before December 5, 1975, $1.9 billion worth of transactions were reported without indication of whether the firm would comply with the request.

In the period prior to December 5, 1975 over 352 million dollars worth of sales transactions were reported to have involved compliance with the request for a restrictive trade practice, compared with over 698 million dollars worth of sales transactions which were reported in compliance with the requests in the period after December 5, 1975.

For both periods one and two, 47.4 percent of the total dollars estimated were reported for transactions where exporters indicated they were "complying" with requests for restrictive trade practices. For the individual periods, the percentage of the total dollar estimates involving transactions where exporters reported "complying" with requests for restrictive trade were the following: (1) Period one (January 1, 1974 to December 5, 1975): 27.8 percent of the total dollar value estimated for that period involved transactions where "compliance" was reported, and (2) Period two (December 5, 1975 to December 31, 1975): 77.2 percent of the total dollar estimates for this period involved transactions where "compliance" was reported.

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[3] See Appendix B for a description of the procedure used to transfer this data into machine readable form and the verification procedures used in this process.

[4] Entries valued at $50,000 or more which were contained in multiple entry forms where some entries were valued at less than $50,000 were included in this category.

TABLE I.—SUMMARY OF DOLLAR VALUES OF REPORTED TRANSACTIONS

[In thousands]

Category of transaction	For transactions less than $50,000 estimated value from period 2				Period 2, dollar values for transactions $50,000 and over	Period 1, dollar values for all transactions	Total dollar values for period 1 and 2 [3]	Low total estimate due to sampling error [4]	Totals (in thousands)	
	Dollar values from samples	Percent of dollar values	Sampling error in dollars [1]	Sampling error in dollars [2]					High total estimate due to sampling error [5]	Low total estimate due to sampling error [6]
Total	20,375	100	794	1,588	1,787,010	2,748,244	4,555,629	4,554,041	4,557,217	4,547,689
Sales transactions	18,844	92.5	767	1,533	755,407	781,524	1,555,775	1,554,242	1,557,308	1,551,940
Trade opportunities	556	2.7	269	538	527,000	1,887,149	2,414,705	2,414,167	2,415,243	----------
Unreported type	964	4.7	168	336	504,173	72,402	577,539	577,203	577,875	----------
Reported compliance with request:										
Did not comply	609	3.0	264	527	140,234	29,406	170,249	169,722	170,776	168,929
Reported complying	16,636	81.6	739	1,478	1,378,879	764,745	2,160,260	2,158,782	2,161,738	2,156,566
Undecided	240	1.2	110	222	132,668	27,937	160,845	160,623	161,067	----------
No response	2,891	14.2	347	695	135,229	1,926,156	2,064,276	2,063,581	2,064,971	----------

[1] Sampling error for 1 standard error, 68 percent confidence interval.
[2] Sampling error for 2 standard error, 95 percent confidence interval.
[3] Sum of values from cols. 1, 5 and 6.
[4] Value in col. 7 minus value in col. 4, 95 percent confidence interval.
[5] Value in col. 7 plus value in col. 4, 95 percent confidence interval.
[6] Value in col. 7 minus sampling error for a 99.9 percent confidence interval (not shown).

APPENDIX A—DESCRIPTION OF THE SAMPLING AND ESTIMATION TECHNIQUES

The volume of reports given to the Subcommittee for period two, December 5, 1975 to December 31, 1975, made impractical tabulation of every report by the Subcommittee. Commerce conveyed a total of approximately 14,000 reports for this period. The reports for period two were divided into two groups; transactions $50,000 and over, and transactions less than $50,000. A sample was selected from entries reported during period two only for transactions less than $50,000. The sampling procedure selected was a stratified probability sample. Entries were grouped into strata with 10 entries. Each entry within each stratum was assigned a numbe between 1 and 10. Three entrees were then chosen randomly from each stratum using a table of random numbers and an EPSEM (equal probability sampling within each element) selection procedure without replacement.[6]

Because a sampling procedure was used to estimate the dollar values for reports less than $50,000, it is necessary to consider the likelihood that the procedure introduced error into the estimates. While it is difficult to calculate estimates of the total error in a procedure such as this, the error due to sampling is calculable. Our estimates of the probable effect of sampling are contained in Table I. These estimates do not account for errors which may result from other causes, e.g., the recording of the data, their transcription, or the lack of complete reporting. Thus, from Table I, the estimated total dollar value of transactions less than $50,000 for period two is $20,375,000. The error due to the sampling procedure is given in columns three and four of Table I. It indicates that, for repeated samples, 68 percent of the time, the actual value which would have been obtained by tabulating all reports less than $50,000 for period two, rather than sampling them, will fall between $19,581,000 and $21,169,000 (i.e., $20,375,000 plus or minus the sampling error for one standard error, which in this case is $794,000). Similarly, 95 percent of the time, with repeated samples, the actual value which would have been obtained by tabulating all reports less than $50,000 for period two will fall between $18,787,000 and $21,963,000 (i.e., $20,375,000 plus or minus the sampling for two standard errors, $1,588,000).

In columns 8, 9, and 10 of Table 1, low and high estimates for the total dollar value for both periods one and two are provided for a 95 percent confidence interval and a low estimate for a 99.99 percent confidence interval. For example, from Table I, the total estimated dollar value for both time periods is $4,555,629,000. Thus, with repeated samples, 95 percent of the time, the actual total dollar value will fall between $4,554,941,000 and $4,557,217,000 (i.e., $4,555,629,000 plus or minus the sampling error for the sample of reports less than $50,000, or $1,588,000). And 99.99 percent of the time, the actual total dollar value for both periods will be no lower than $4,547,689,000.

The following is the procedure used to estimate the totals and the sampling error as developed by Dr. Benjamin Tepping, retired Chief of the Research Center for Measurement Methods for the Census Bureau:

1. Estimation of totals

The estimation of any dollar value is here the sum of three parts: (*a*) The dollar value reported in entries filed with the Department of Commerce for 1974 and the first three quarters of 1975; (*b*) The dollar value of the entires valued at $50,000 or more in the last quarter of 1975; and (*c*) the dollar value of entries valued at less than $50,000 in the last quarter of 1975.

Since the estimates for part (*c*) are to be based on a sample of 3/10 of the reported entries, the estimated dollar value is simply 10/3 times the sum of the entries in the sample.

To obtain estimates of totals for subclasses of entries (such as sales, or compliance entires, or compliance sales, etc.), the estimates for part (*c*) are obtained in exactly the same way as above except that zeros are substituted for the dollar values of entries that are not in the specified subclass.

2. Estimation of sampling error

Parts (*a*) and (*b*) are not subject to sampling error. For part (*c*), the

[6] Kish, Leslie. Survey Sampling. New York: John Wiley and Sons, Inc., [1965], p. 20–22.

estimated sampling variance of an estimated total dollar value will be given by the following formula:

$$s^2 = (10/3)^2(.7)\sum_h \frac{n_h}{n_h - 1} \sum_i^3 x_{hi}^2 - (\sum x_{hi})^2/n_h$$

where n_h, the number of entries selected for the sample of stratum h, is always 3 except possibly for the last stratum. Note that x_{hi}, the dollar value for the i-th selected entry in stratum h, is taken to be 0 if that entry is not a member of the subclass for which the estimate is constructed.[7]

The standard error of the estimated total is s, the square root of the estimated sampling variance s^2. A 95 percent confidence interval is the interval whose lower and upper boundaries are respectively $x-2s$ and $x+2s$, where x is the estimated dollar value. That is, the probability is approximately 95 percent that an interval constructed in this way will include the value of the total that is to be estimated. It should be noted that this takes account only of the variations that arise from sampling error, that is, because a sample rather than all of the records have been tabulated.

As noted by Dr. Tepping, the values presented in Table I represent only the possible variation due to sampling error. Other possible sources of error such as duplication of report forms and/or error in the initial computer entry are not included in the values which represent the sampling error. Various attempts were made to minimize the impact of other types of error and these efforts are outlined in Appendix B.

Appendix B—Description of the Verification Procedures

The Subcommittee performed various verification procedures to eliminate any systematic source of error in the material received. However, the Subcommittee made no attempt to validate any of the reports by providing for an independent check with the exporters to find out whether or not they had filled out the form in question. The following procedures were used to verify the received material and the analysis for period one:

1. Material was placed in folders by company name for each quarter.
2. Each form was assigned a unique number and each transaction within each form was assigned a letter. Any duplicates found were not numbered.
3. During the coding of the material, any duplicates encountered were discarded. However, a systematic attempt to eliminate duplicates was not made at this stage.
4. Coded material, based on the coding instructions of the Subcommittee, was entered into the computer from a terminal (online entry) with a prompting program. Due to the limitations of the resources available to the Subcommittee, manual procedures were used to check the validity of the data at the time of data entry in place of a computerized edit routine.
5. A complete listing, performed by the computer, was made of the form numbers and a comparative list check was made for accuracy of entry. Coding was checked and any errors were noted, to be corrected by the terminal operator at a later period.
6. A second listing was made and a check against the first listing was made. More duplication was eliminated.
7. Under the direction of CRS, a procedure was devised to rank order the dollar values, and duplicate dollar values were checked for transactions with very large dollar values. This made it possible to identify and eliminate some duplicates which might have had a considerable impact on the estimates used.

The following were the verification procedures used for material from period two:

1. As the material was sorted into three groups (entries not relating to exporters, those relating to exporters and valued at $50,000 or over, and those relating to exporters and valued at less than $50,000), any duplicate entries found were removed.

[7] Kish, *op. cit.*, p. 82–84.

2. Entries relating to exporters and valued at $50,000 or over were entered directly into the computer and an independent double verification procedure was performed.

3. For entries relating to exporters and valued at less than $50,000 (those which had been sampled), an independent sampling replication was performed to check coding. Also an independent replication of the numbering scheme was performed. Any duplicate encountered in the process was eliminated.

The following may be considered possible sources of error in the material:

1. If, in period one, all freight forwarders were not eliminated, they would be included with the exporters.

2. If all duplicate copies in the original material provided by the Department of Commerce to the Subcommittee were not eliminated, the total dollar estimates would be inflated.

APPENDIX D

FORM DIB-622
(REV. 6-72)
(Formerly ITA-622)

U.S. DEPARTMENT OF COMMERCE
DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION
BUREAU OF EAST-WEST TRADE
OFFICE OF EXPORT CONTROL
WASHINGTON, D.C. 20230

Form Approved,
Budget Bureau No. 41-R105

U.S. EXPORTER'S REPORT
OF REQUEST RECEIVED FOR INFORMATION, CERTIFICATION, OR OTHER ACTION INDICATING A RESTRICTIVE TRADE PRACTICE OR BOYCOTT AGAINST A FOREIGN COUNTRY

A. IMPORTANT. It is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States. All U.S. exporters of articles, materials, supplies or information are encouraged and requested to refuse to take, but are not legally prohibited from taking, any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting such restrictive trade practices or boycotts.

Accordingly, I enco...ge and request individuals and firms receiving such requests to refuse to comply with them.

Secretary of Commerce

B. INSTRUCTIONS: This form must be completed by a U.S. exporter whenever he is requested to take any action, including the furnishing of information or the signing of an agreement, which is designed to support a restrictive trade practice or boycott fostered or imposed by a foreign country against any other country not included in Country Group S, W, Y, or Z. (Country Groups are listed in Supplement No. 1 to Part 370 of the U.S. Department of Commerce Export Control Regulations.) **Submission of this form is mandatory (50 USC App. 2403(b). Failure to comply subjects the U.S. exporter to the penalties prescribed in Section (6) of the Export Administration Act of 1969, as amended.** It must be submitted to the U.S. Department of Commerce, Domestic and International Business Administration, Bureau of East-West Trade, Office of Export Control, Washington, D.C. 20230, within fifteen business days from the date of receipt of such a request. Whenever a person receives more than one request for action with reference to the same transaction, only the first request need be reported to the Office of Export Control (See Part 369 of the Export Control Regulations).

C. CONFIDENTIAL. Information furnished herewith is deemed confidential and will not be published or disclosed except as specified in Section 7(c) of the Export Administration Act of 1969 (50 USC App. 2406(c)).

1. Name and Address of U.S. Exporter submitting this report:

Name:

Address:

City, State, and Zip Code:

2. Exporter's Reference No. *(If any)*

3. Name of Country/ies against which the request is directed:

4. Date request was received by me/us:

5. I/We received this request from:

Name:

Address:

City and Country:

6. Specify type of request received. *(If any item in 6b is checked, complete item 7)*

a. ☐ Questionnaire *(Attach copy)*

b. ☐ Other type of request for information or action contained in:

☐ Trade Opportunity ☐ Certificate of Origin ☐ Consular Invoice
☐ Bid Specification ☐ Certificate of Manufacture ☐ Other *(Specify)* _____
☐ Purchase Order ☐ Letter of Credit

7. If item 6b above is checked, give the specific information or action requested. (Use direct quotations from the request.)

8. If the request relates to a specific transaction, describe the commodities or technical data involved. (The description of the commodity or technical data may conform to the description on the order or to usual commercial terminology, and may but need not be in terms of the Commodity Control List or Schedule B.)

Quantity	Description	Value

9. Additional Remarks:

10. Action: (Completion of the information in this item would be helpful to the U.S. Government but is not mandatory.)

a. ☐ I/We have not complied and will not comply with the request for information or action described above.

b. ☐ I/We have complied with, or will comply with, the request for information or action described above.

c. ☐ I/We have not decided whether I/we shall comply with the request for information or action described above and I/we will inform the Office of Export Control of my/our decision.

11. I certify that all statements and information contained in this report are true and correct to the best of my knowledge and belief.

Sign here for ink _____ Type or print _____ Date _____
(Signature of Person Completing Report) (Name and Title of Person whose Signature Appears on the Line to the Left)

APPENDIX E

BUSINESS INTERNATIONAL CORP.

To: Clients of Business International Executive Services.
From: Robert S. Wright, Vice President and General Manager, Western Hemisphere.
Subject: Conclusions of the Business International Roundtable on the Arab Boycott, Washington, D.C., March 25, 1976.

The conclusions following were not formally discussed with the 80 client executives who attended this roundtable. Nevertheless, Business International believes they represent a fair consensus of the main factual points that emerged from the roundtable, as well as the most salient practical suggestions that were made.

Three issues are involved for U.S. companies: the primary boycott by Arab countries, Arab companies and Arab individuals against all business with Israel; the secondary boycott by the Arab Central Boycott Committee and national boycott committees in the Arab countries (who interpret boycott regulations in varying ways) against all companies and individuals, whether U.S. or not, doing business with Israel (investment, licensing or selling); and the tertiary boycott in which U.S. companies deny business to other U.S. companies or individuals to comply with boycott regulations. (This covers the Bechtel case now in litigation or such instances as banks denying membership in forming syndicates to banks that the Arab boycott authorities consider Jewish.)

While there are gray areas in each of these, the thrust of U S. policy at present (but subject to legislative change, probably some time this year) is that the primary boycott, while considered undesirable, is outside U.S. legal jurisdiction; the secondary boycott would probably be illegal under U.S. law but is outside U.S. jurisdiction except to the extent that the U.S. government regulates U.S. company compliance with Arab boycott regulations, e.g. reporting and discrimination provisions); the tertiary boycott is clearly illegal for U.S. companies, probably under the Sherman Act and certainly under the civil rights and equal opportunity statutes.

Inevitably, there is now considerable corporate confusion as to the applicability of U.S. laws and regulations to international companies' response to the Arab boycott. This confusion is partly due to the fact that none of the laws and regulations were created specifically to deal with the boycott question and, more vexingly, the fact that some of the legal mandates are contradictory, leave major gray areas and, in some cases, overlap, as to the relevant enforcement agencies.

Three major problem areas emerged: (1) The impact of U.S. antitrust law and policy on the tertiary boycott involved, i.e. discriminatory action demanded by Arab boycott authorities against other U.S. companies or persons; (2) The boycott reporting requirements of the Export Administration Act; (3) Visa problems in Arab countries and how these impinge on U.S. civil rights laws.

1. In the antitrust area, the Justice Department representative made it clear that the Department believes the Sherman Act applies to cases where companies comply with the boycott by refusing to deal with another U.S. company, or by causing other companies to do so. This is the heart of the Justice Department's complaint against Bechtel Corp., instituted in January 1976. However, the Bechtel complaint does not reveal what specific acts the Justice Department believes constitute a "conspiracy" under the Sherman Act to discriminate against U.S. companies. Until the case comes to court or is settled out of court, this remains a troublesome gray area for companies.

2. U.S. exporters receiving requests to participate in a boycott have been required to report such requests to the Commerce Department Office of Export Administration since 1965. Since December 1975, companies have been required to inform the Department as well whether they complied with the boycott request

or intend to comply. However, although both the Export Administration Act and the regulations contain hortatory language expressing the U.S. government's wish that companies not comply with boycott requests, neither the law nor the regulations forbid companies to comply—unless doing so would discriminate against U.S. citizens or companies.

A key problem in this area is the definition of "compliance." Does merely answering the boycott request (no matter what the answer is) constitute compliance? Commerce Department representatives at the roundtable indicated they did not believe this to be so. Thus, in reporting a boycott request, companies should be careful to distinguish between merely answering a boycott request and actively complying with a boycott request. This is easy to do, since the regulations allow companies to report by letter instead of the standard reporting form, if they so desire. Reporting by letter rather than form could become very important for companies if the legislation with the greatest chance of passage this year, S. 953 (see below) does become law and corporate reports are made available to public scrutiny.

Another problem that arose in this area is: when does the U.S. government consider that a U.S. company has received a boycott request (i.e. must all requests be reported)? The Commerce Department representative expressed the view that the regulations say only that the U.S. exporter must report receipt of a boycott request. Thus, if a U.S. company's foreign affiliate receives a boycott request and does not report it to the U.S. parent, the U.S. parent is not expected to report the request to the Commerce Department. Theoretically, this means that U.S. companies trading with Arab nations could set up Middle Eastern trading companies (in Europe, for example) that do not report boycott requests back to the parent. However, the Commerce Department representative also pointed out that this would come close to evasion, if not avoidance, of the intention of the Export Administration Act. It might also prompt legislative action from Congress.

On the other hand, the Commerce Department representative said without equivocation that the reporting requirement is tied to an "export transaction," so that if a company encounters the boycott while examining a deal that does not materialize, it does not need to report.

It also became clear that the reporting requirements apply to banks, insurers, etc., but that the Federal Reserve Board has not, at this stage, forbiddeen banks to process letters of credit with boycott language.

3. The question of visa problems arises primarily, although not exclusively, in doing business with Saudi Arabia. Representatives of the Justice, State and Treasury Departments made clear at the roundtable that U.S. civil rights laws do apply in such situations, and that the U.S. government believes that companies that bow to visa refusals on discriminatory grounds are breaking the U.S. law. In cases where a company is doing business under contract to either the U.S. government or an Arab government under the aegis of an official joint commission, the Treasury Department has conveyed to Arab governments its policy of not tolerating visa refusals for U.S. citizens on discriminatory grounds of race, sex, color, religion or national origin. The governments concerned (including Saudi Arabia), have indicated they will cooperate with U.S. policy in this area. The Treasury Department said that no visas have so far been refused to government or private-sector employees working in Saudi Arabia and the State Department representative encouraged companies that run into visa problems to inform the Department of State, which will try to negotiate them out with the relevant embassies.

What is the outlook for change? For one thing, Congress appears to be moving toward some sort of new legislation that deals with the boycott problem. A number of legislative initiatives exist, of varying degrees of extremism, but the most likely to pass is the relatively moderate Stevenson-Williams bill (S. 953), which would not prohibit companies from complying with boycott requests but would require public disclosure by the Commerce Department of companies' response to boycott requests. Under S. 953, the Commerce Department would not be required to publish company responses but would have to open them to public scrutiny on request. S. 953, which is opposed by the Administration, has been reported favorably to the full Senate by the Banking Committee and will be taken up by the Senate in connection with the extension of the Export Administration Act, which will probably reach the Senate floor by June or July. There is a companion bill in the House, sponsored by Rep. Koch (D, New York).

Companies' main concern with S. 953 is its public disclosure requirement. Senator Stevenson feels that public disclosure would help companies deal with

the boycott by making clear to the general public just how they have dealt with the situation, rather than leaving them exposed to critical conjecture and suspicions of improper actions.

On the international front, although there has been talk of negotiating an international code of conduct for companies dealing with boycott situations (either separately or as part of the current OECD exercise), the chances of action are slight since the U.S. government is so far virtually alone in its concern over companies' compliance with the boycott.

During the corporate interchange, several companies noted that a distinction should be made between complying with a boycott questionnaire and the boycott itself. In many instances a company can answer certain questions or certify documents without running afoul of U.S. laws on discriminatory practices. In other instances, companies routinely answer questionnaires and certify documents pro forma. Revealing such practices, many companies feel, could expose them to action by anti-boycott groups like the AJC.

In the absence of clear cut federal regulations and/or a Middle East peace settlement, companies can explore the following techniques:

Transact business with Arab nations through subsidiaries abroad, since these subsidiaries are apparently not covered by Commerce Department filing requirements;

Sell to the Arab market through middlemen, e.g. trading houses;

Have products shipped from the United States insured by an Arab insurance company. This can eliminate any requests to fill out questionnaires or certify documents;

Solicit the support of Arab purchasers to eliminate or rephrase questions in the boycott documentation they require so that the answers either comply with U.S. laws and regulations or do not have to be filed with the Commerce Department. (The State Department representative also suggested this as a possible procedure.)

Refuse to answer questionnaires or certify documents. Some Arab countries' consulates accept this; others don't;

Some companies, instead of certifying that exported goods are "not of Israeli origin" certify instead that they are "made in the U.S.A." This, a number of firms reported, works.

Where companies face stockholder questions or suits inspired by the American Jewish Congress or other organizations and can demonstrate that they do business with Israel and the Arab world (as many do), discreet discussions with the AJC and/or Israeli purchasers/suppliers can cause such stockholder action to be withdrawn and prevent potential counter-boycotts to which consumer product manufacturers are most vulnerable. Of course, a flat-out declaration that compliance with a boycott request—even if pro forma—is against company policy eliminates many problems. It may also, however, eliminate sales to Arab markets.

As for the controversial New York State law, expectation is that it will be eclipsed by federal law. Even its backers recognize that it is constitutionally dubious and unenforceable, and many of its early advocates are now known to have second thoughts about its feasibility, especially since some goods destined for the Arab countries are being rerouted to other ports. It seems probable that once the federal government preempts the New York Port Authority over the Concorde issue, similar preemption will be exerted over the New York law, as well as other actual (Ill.) or contemplated state laws (Cal., Md., Pa., Wisc.). The reason for the probability of Federal law preempting state law in this matter is that the Constitution reserves the regulation of foreign commerce to the federal domain.

Although the rountable focused primarily on U.S. government laws, regulations and policies related to the Arab boycott, a number of companies present either were, or had been, on the boycott list. Some of these firms reported that they were making efforts to get off the list and at least two of these said that efforts to get off by making "countervailing" investments in Arab countries had produced no results. Other companies on the list said that they were not making any effort to get off the list, either because they believed it dangerous from U.S. public policy viewpoint to comply with the demands made of them to get off the list, or because they felt that being on the list did not deny them much business. The point was also made that companies had to weigh the advantages of complying with the boycott demands against the possible disadvantages such compliance might bring in the U.S. domestic market from groups opposed to the boycott.

APPENDIX F

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE.

EVALUATION OF FORMS USED BY THE DEPARTMENT OF COMMERCE TO ADMINISTER ANTIBOYCOTT PROVISIONS OF THE EXPORT ADMINISTRATION ACT

(By Daniel Melnick, Analyst, American National Government, Government Division, July 28, 1976)

The following is an evaluation of the report forms used by the Department of Commerce in administering the provisions of the Export Administration Act (50 U.S.C. App. s 2401 *et. seq.*). 50 U.S.C. App. s 2403(b) requires "all domestic concerns receiving requests for the furnishing of information or the signing of agreements as specified in section [2402] to report this fact to the Secretary of Commerce for such action as he may deem appropriate to carry out the purposes of section 2(4)." Section 40(5) provides:

"(5) It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, and (B) to encourage and request domestic concerns engaged in the export of articles, materials, supplies, or information, to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against another country friendly to the United States." (Public Law 91–184, s 3, Dec. 30, 1969, 83 Stat. 841.)

The Department of Commerce currently uses forms DIB–621P and DIP–630P to collect the information required by this act. Our evaluation of this form began with an examination of the record clearance established for the form by the Office of Management and Budget (OMB).

The Federal Reports Act [44 U.S.C. s s 3501–3511] provides that the Director of OMB must indicate that he does not disapprove the form before any executive branch agency can utilize a form which collects information from 10 or more members of the general public [44 U.S.C. s 3509]. In the process of clearing each form, it is assigned an OMB clearance number and a docket is maintained which can be used to establish the basis upon which decisions relating to the content of the form, and the instructions which accompany it were made.

The OMB (formerly the Bureau of the Budget) clearance docket for OMB Clearance No. 41–R2305 [known as DIB–621P] makes it possible to outline the following chronology of actions taken by Commerce, the Bureau of the Budget (BOB), and the OMB in the approval of this report form. [A copy of the docket has already been transmitted to you.]

CHRONOLOGY OF ACTIONS

June 30, 1965: Provisions of the Export Adminstration Act requiring reporting of requests for restrictive trade practices to "all domestic concerns" are approved by the President and enacted into law.

The Commerce Department is required to promulgate regulations within 90 days of enactment. [79 Stat. 210, Public Law 89–63.]

September 8, 1965: The Commerce Department files a request with the Bureau of the Budget for approval of a report to be filed by every exporter who receives a request for a restrictive trade practice. Commerce indicates that:

1. "The number of reportings required from a U.S. exporter has been minimized in that the exporter need report to the Department of Commerce the receipt of only the first request for action regarding an export transaction. This will greatly reduce the burden of the U.S. exporter in that it is common practice for a great

number of requests to be made with regard to a single export transaction, e.g., initial negotiation of a transaction, purchase order, certificate or origin, certificate of manufacture, letter of credit, consular invoice, etc."

2. "There are no plans for tabulation other than for purposes of internal use and such other reports as required by the Export Control Act. In addition, information will be reviewed and analyzed to determine appropriate action to be taken by the U.S. Government in the pursuit of the general policy to "oppose restrictive trade practices or boycotts."

3. "There is no intention to publish the detailed contents of the information supplied by the reporting requirement except as required under the terms of the Export Control Act."

September 15, 1965: The form and reporting procedure are approved by BOB. The BOB Clearance officer makes the following note in the file:

"This new report is required by law (50 U.S.C. App. 2026). Given what Commerce might have required under the law, this requirement is mild. Especially helpful in reducing burden is the provision that information need be reported on only the first request for restrictive action received regarding that transaction. See the attached form and note paper for comments and changes in the form.

"After a copy of the form was sent to Pratt (MAPI),[1] Berger (Commerce) called to say that Sec. Conner of Commerce did not want the proposed form made available to anyone outside the Government. Pratt was asked not to discuss it before I called him, not to make it available to anyone else and to return the copy I sent him. I requested and received by telephone his comments on it. . .

"Needless to say, Commerce's disposition toward secrecy on this form did not sit well with industry. Industry representatives find it difficult to reconcile such a position with the Administration's objective of reducing unnecessary paperwork and seeking industry's advice and guidance in doing so."

February 24, 1966: Mr. George Curtis, Manager, World Trade Department, Automobile Manufacturers Association, Inc. (AMA) writes to the Department of Commerce and the Bureau of the Budget stating that "the industry could suggest several changes which would not lessen the effectiveness of the survey and at the same time escape the repetitious reporting of identical cases as is currently required."

March 9, 1966: Rauer H. Meyer, Director, Office of Export Control writes to Mr. Curtis to the effect that "We, too, have been aware of this problem, and you will be glad to know that at the present time we are studying the feasibility of revising the regulations to permit exporters to file periodic reports covering continuing transactions with the same consignee in lieu of filing separate forms IA–1014 [currently called DIB–621P] for each order."

March 16, 1966: The Department of Commerce requests the Bureau of the Budget to allow a modification in the reporting procedure. It proposes, alternative method which "permits the exporter to submit a report covering all transactions which he received during a calendar quarter from a single foreign person or firm. The quarterly report shall be submitted by letter and shall contain in a consolidated form essentially the same information which would have been included on Forms IA–1014 together with an indication of the number of transactions to which the reported restrictions were applicable."

March 23, 1966: BOB approves Commerce Department proposal.

April 4, 1966: Russell Schneider, Executive Secretary, Advisory Council on Federal Reports telephones the BOB clearance officer and reports "that AMA was happy with the new quarterly report and felt it solved their problems."

September 16, 1968: BOB approves routine extension of clearance for the form. No changes are indicated.

December 30, 1969: Export Administration Act of 1969 becomes effective—no change in the reporting requirement.

October 14, 1971: OMB approves routine extension of clearance for the form. No changes are indicated.

November 17, 1971: The quarterly reporting requirement is modified by inserting a rule change in the Federal Register. It now permits quarterly reports "covering all transactions regarding which requests are received from persons to firms in a single country during a single calendar quarter." [36 F.R. 22011, November 18, 1971]. The OMB clearance docket makes no mention of the change.

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[1] Machinery and Allied Products Institute

October 2, 1974: OMB routinely extends the clearance of the form to September 1977. No mention of the rule changes made in 1971 included in the docket.

August 26, 1975: OMB approves Commerce Department proposal to require banks, insurers, shippers and forwarders, in addition to exporters, to file reports. It makes mandatory the requirement that compliance must be reported. It also requires all transactions involving discrimination against U.S. citizens to be reported on a single transaction form and issues a new form (DIB–630–P) for this purpose.

The revised regulations specify that reports could be made on a quarterly basis by country but differ in several respects from the regulations issued in 1971 [36 F.R. 22011, November 18, 1971]. The 1971 regulation reads in part:

"(2) Multiple transactions report: Instead of submitting a report for each transaction regarding which requests are received from persons or firms in a single calendar quarter. This report shall be made by letter to the Office of Export Control no later than the 15th day of the first month following the calendar quarter covered by the report. If the exporter has received requests from persons or firms of more than one foreign country, a separate report shall be submitted for each country. Each letter shall include the following information:

"(i) Name and address of U.S. exporter submitting report;

"(ii) Calendar quarter covered by report; request is directed;

"(iii) Name of country(ies) against which the request is directed;

"(iv) Country of requester;

"(v) Number of transactions which restrictions were applicable;

"(vi) Type(s) of request(s) received (questionnaire, attach copy. If other than questionnaire, give the type of document or other form of request and the specific information or action requested.);

"(vii) General description of the types of commodities or technical data covered and the total dollar value thereof; and

"(viii) whether or not the U.S. exporter intends to comply with the request(s). (Suomission of the information required by this subdivision would be helpful to the U.S. Government but is not mandatory)."

The 1975 version[2] reads in part:

"(2) Multiple transactions report: Instead of submitting a report for each transaction regarding which a request is received, a multiple report may be submitted covering all transactions (*other than those described in s369.2, which must be reported individually*) regarding which requests are received from persons or firms in a single country during a single calendar quarter. This report shall be made by letter to the Office of Export Administration no later than the 15th day of the first month following the calendar quarter covered by the report. *If requests are received from persons or firms of more than one foreign country, a separate report shall* be submitted for each country. Each letter shall include all of the following information:

"(i) Name and address of U.S. person or firm submitting report;

(ii) *Indicate whether the reporter is the exporter or a service organization and, if the latter, specify role in the transactions;*

"(iii) Calendar quarter covered by report;

"(iv) Name of country(ies) against which the request is directed;

"(v) Country of requester;

"(vi) Number of transactions to which restrictions were applicable;

"(vii) *The customer order number, exporter's invoice number, and letter of credit number for each transaction, if known;*

"(viii) *Type of request received. Attach a copy of each requesting document or other form of request, or a pertinent extract thereof;*

"(ix) A general description of the types of commodities or technical data covered and the total dollar value, if known;

"(x) *The number of requests the reporter has complied with or intends to comply with. If the reporter undecided, he is required to submit a further report within 5 business days of making a decision. If the decision is to be made by another party involved in the export transaction, that party should be identified.*

"(xi) *Each letter submitted by an export service organization shall also*

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[2] Italicized passages were added or changed in 1975.

include the name and address of each U.S. exporter named in connection with any requests received during the quarter. Following each name, affix the identifying numbers required in (vii) above, insofar as they are known. If this information is included in the copies of documents required by (viii) above, the separate listing may be omitted.

"(xii) *Each letter must include a signed certification that all statements therein are true and correct to the best of the signer's knowledge and belief and indicate the name and title of the person who has signed the report.*"

An examination of the OMB docket and the report form itself supports the following assertions regarding DIB-621P:

The form was designed to fulfill the minimum requirements of the law.

The form was not designed to facilitate data collection or retrieval. The tabulation procedure was not considered as a necessary part of the approval of the form.

No provision was made for easy convertibility into machine readable format.

The reporting requirement was progressively relaxed through changes in the regulations to accommodate the needs of firms required to file the form. On September 15, 1965, firms were required to file reports of the initial request regarding a transaction. On March 23, 1966, firms were permitted to file quarterly reports covering all requests received from a single firm. Subsequently, and apparently without OMB review, on November 17, 1971, they were allowed to file reports covering all requests received from firms in a single country. To date, no standardized form has been issued.

From the docket it appears that OMB did not approve the changes in the quarterly letter reporting which were made by regulation on November 17, 1971. The OMB statistical Policy Division clearance officer confirms that OMB has no record of having approved the 1971 change in the regulations. If this is the case, it would imply that the Department of Commerce had not complied with the Federal Reports Act which requires OMB to indicate that it does not disapprove of the use of every reporting from used to collect information from more than 10 members of the general public (44 U.S.C. § 3509). In such a case, persons required to file reports under the regulation might argue that they were not obligated to comply because the procedures had not been approved by OMB.

The consolidation of reports is certainly more convenient for exporters and others required to file reports. Nevertheless this consolidation [in the absence of a standard report form] makes tabulation difficult. Quarterly letters are received in numerous formats. According to preliminary estimates over 20,000 reports [including both quarterly single transaction reports] were filed in the first quarter of 1976. In his August 1975 review the OMB clearance officer estimated that only 16,000 reports would be filed annually. In the absence of a computerized data management system, it is difficult to see how the Department of Commerce can fulfill its obligation to monitor firms so as to ensure that reports are filed in a timely and complete fashion.

The type of "request" referred to in Block 8 of the report form is in fact a type of document by which requests are transmitted. Consequently, information in this block cannot be used to classify transactions according to the nature of the request made, e.g., whether a request for discrimination against a U.S. citizen or firm was involved.

The report forms used December 1, 1975 did not allow adequate space for the exporter to "give the specific information or action requested," using "direct quotations from the request." This item provides the specific information regarding what American companies are being asked to do by the Arab countries. Yet the space for answering this question allowed for two single-spaced typewritten lines. An examination of the reports subpoenaed by the subcommittee shows that in most cases the companies were forced to complete the answer to this question elsewhere, on the back of the form, in the section provided for additional remarks, or on a separate sheet.

Changes made on December 1, 1975 require responding firms to submit a copy of the request, along with the report form. While this procedure does avoid the space problem encountered earlier, it will undoubtedly make handling of the information by the Department of Commerce more cumbersome. If Commerce were to decide to reduce the information to machine readable form, the attachment of copies of the requests would increase the time and expense involved in coding this important piece of information.

The report form and regulations lack a clear definition in the use of the term "request." Firms receiving boycott "requests" are required to report such "requests." The confusion arises from the fact that in many cases there was no specific "request," that is, no specific "act of asking for something to be given or done."[3]

The boycott-related activities were simply part of the import regulations with which the exporting firm had to comply in order to ship its goods. Frequently, the exporter appears to have been unaware of these requirements until the time of shipment. In some instances the exporting firm attached to their boycott report copies of pages from Dun & Bradstreet's "Exporter's Encyclopedia" listing specific import regulations. There was confusion relating to the existence of a "request," the date the "request" was received (item 2), and occasionally, the "requestor." Thus, the treatment of the concept of "request" appears to be inappropriate, creating undue confusion and inconsistency in reporting. Clarification of this issue might require amendment of the Export Administration Act because the act uses the term "request."

The regulations resulting to the filing of the boycott reports allow the reporting firm to file a single transaction report or a multiple transactions report (Export Administration regulations June 1, 1974, 369.2B; now 369.4b). The regulations do not, however, specify what is meant by "transaction."

The design of the form prior to December 1, 1975 may have contributed to the exporters' confusion regarding the information called for in each block. For example, there was considerable confusion concerning the country(ies) being boycotted and the country(ies) doing the boycotting. In the report form DIB–621, the country being boycotted is to be entered in block 3: "Names of the country(ies) against which the request is directed:" the name of the country(ies) doing the boycotting is to be entered in item 5: "I/We receive this request from: name, address, city, and country." In 5.2 percent of the Subcommittee's computer record entries, the reporting firm indicated that the boycotting country and the boycotted country were the same, an impossibility. This figure goes up to 10.7 percent when the number of reporting firms rather than the number of record entries is considered. In addition, a marginal 0.7 percent of record entries left boycotting country blank or filled in a question mark. Although the newly revised form (DIB–621–P, Rev. 11–75) makes the distinction somewhat clearer, monitoring and possible correction of the problem may still be necessary.

Other block items for which inadequate space was provided were "additional remarks" (item 9), the listing of commodities involved in the reported transaction (item 8), and, frequently, in the event that a group of countries was to be listed, the listing of the boycotted countries (item 3).

In sum, the design of the form used by the Department of Commerce to collect reports of restrictive trade practices appears to reflect Department decisions to avoid all tabulations of the data not strictly required under the law. The regulations permitting the use of quarterly reports by letter appear to have been amended in 1971 without reference to the Office of Management and Budget. It is difficult to imagine how the Department of Commerce intended to check to see if exporters were filing reports as required, let along performing accurate tabulations of the results.

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[3] The American College Dictionary, New York, Random House, 1957, p. 1030.

APPENDIX G

LEAGUE OF ARAB STATES,
CENTRAL OFFICE FOR THE BOYCOTT OF ISRAEL,
August 31, 1975.

DISTRICT COMMITTEE NO. 12,
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.,
New York, N.Y., U.S.A.

GENTLEMAN: With reference to your letter of August 10, 1975, we have the honour to inform you of the following:

1. The list of companies boycotted by the Arab countries is quite changeable where names of companies are deleted from or added to it frequently. Therefore, you will appreciate that we are not in a position to supply you with the same.

2. The Arab boycott of Israel has been created in the early fifties under a decision taken by the Council of the League of Arab States. It is carried out in accordance with certain laws and rules in force in the Arab countries. We send to you enclosed herewith, a copy of a statement made by H.E. the Commissioner General on the nature, objects and measures of the Boycott. We believe that the said statement contains answers to the questions you raised.

3. The Arab Boycott authorities is ready to supply you with the necessary information on the status of a certain company in the light of the rules in force in the Arab countries. You could inquire about the same from the Regional Office for the Boycott of Israel in the Arab country with which the dealings will be made after supplying them with the full name and address of the company concerned.

We remain,
Very truly yours,

MOHAMMED MAHMOUD MAHGOUB,
Commissioner General.

NATURE OF THE ARAB BOYCOTT OF ISRAEL

(By H. E. Mohammed Mahmoud Mahgoub, Commissioner General of the Arab Boycott of Israel)

The Arab boycott is both a preventive and a defensive measure: It is a preventive measure because its purpose is to protect the security of the Arab states from the danger of Zionist cancer; it is a defensive measure because its basic objective is to prevent the domination of Zionist capital over Arab National economics, and to prevent the economic force of the enemy, which is well studied and planned, from expansion at the expense of the interests of the Arabs.

The Arab Boycott is also of a tolerant nature. It is very careful not to harm the interests of foreign companies and their shareholders. As soon as the Boycott Authorities get information that a certain company or companies have established relations with Israel they make contacts with them to find out the truth and the nature of these relations. If it turns out that these relations do not go beyond pure ordinary business relations, the matter is over and dealings with such companies are not restricted. On the other hand, if it turns out that this relation is of the type which will support the economy of Israel or strengthen its war effort and thus serve its aggressive ambitions for expansion, the company will be told that this relation is harmful to the interests of the Arab states which are still in a state of war with Israel, and according to the laws and regulations of these states they have to prohibit any dealings with these companies if they maintain their relations with Israel. The company is

then left free to decide whether to deal with the Arabs and thus terminate its relations with Israel, or to stop dealing with the Arabs and continue its relations with Israel.

The Boycott Principles are also very far from racial or religious influences; it is practiced with all persons—natural or moral—notwithstanding their nationality or religion, as long as they support the economy of Israel and its war effort. In this respect, the Boycott Authorities do not discriminate among persons on the basis of their religion or nationality, they rather do so on the basis of their partiality or impartiality to Israel and Zionism. Nothing can prove that more than the fact that Arab states deal with companies that are owned by Jews who are not biased in Israel's favour and did nothing that support is economy or strengthen its military effort; while, on the other hand, Arab states have banned dealings with foreign companies and firms owned by Moslems or Christians, because such companies have done things which have supported the economy of Israel or its military effort.

The Arab Boycott, in addition to what was said above, is of an international legal nature: It is built on two factors which were approved by legal experts, that they do not violate any of the provisions of international law. It is also legally admitted that official boycotting is legal in the state of war; it is also considered legal in the state of peace if used for punishment. No doubt that the Arab states are in a state of war with Israel. Cease-fire or armistics of any kind does not end a state of war. According to international law the Arab states have the full right to take measures that are necessary to protect their security and safety against their enemies, as long as a state of war still exists. A few legal experts say that the armistice between Israel and the Arab states cannot be considered a state of war, but the majority of legal experts in international law consider boycotting as legal in the state of peace if it is used in response to an internationally illegal action. Boycott is a procedure which can be used by a state to face the harm that it suffered by illegal action performed by some other state. The purpose is to make the violating state respect international law and thus stop the illegal action. In other words to face illegality by "legality". Israel is still occupying Arab land, but it usurped the rights of its owners, dispersed them outside their home, and seized their money and property in addition to its continuous aggression against Arab countries neighbouring Palestine. No doubt that all these actions are considered illegal. This was the resolution of the Security Council in many of its meetings. Thus if we accept the opinion of those few legal experts, who say that the armistice puts an end to a state of war, the Arab Boycott will remain legal according to international law and to the opinion of the big majority of legal experts, on the basis that this boycott is a punishment for an illegal action.

This is from the point of view of international law. As for the point of view of commercial law accepted by the world, the Arab boycott of Israel is built on well known legal foundations; it is the rules: "contract is the law of contracting parties", and each party has the right to put the terms which it feels are suitable to its interests: the other party is also free to accept or refuse these terms. If it accepts them the contract is thus concluded, and if it refuses them the contract will not be concluded. The Arab countries make certain terms to establish commercial relations with foreign countries in order to secure that their capital and economy do not go to Israel. This is done to guarantee its safety and protect its economy. Foreign countries are free to accept these terms or refuse them, and this could not be considered interference in their affairs on the part of the Arab states.

Reasons which call for putting the name of a foreign company or firm on the black list

These reasons could be easily summarized as follows: When a foreign company or firm carries out any action in Israel which might support its economy, develop its industry or increase the efficiency of its military effort. No doubt that these things are clear enough and every such company or firm can know whether its action falls under the above mentioned factors.

Does untrue or inaccurate information result in banning dealing with a foreign company or foundation?

I am sure that such a thing never happened in the past and will not take place in the present or the future, because banning will not be achieved except after assuring that the foreign company or firm has committed the violation.

and after contacting the said company (when the information is not from an official source) and asking it to explain its attitude to the charge directed at it, or at least deny it.

In order to be sure that the company has received this question or warning, the Boycott Authorities should receive back the mailing receipt of that warning signed by the said company as an acknowledgment of receipt.

Even in cases when it is definite that certain companies have established relations with Israel in the manner mentioned above, dealing with such companies will not be banned—in spite of the definite proof—until after the company is informed and asked to sever such relations, if it feels that its interests require that; and then it should prove that it has done so.

In cases of this sort two things usually take place: The company may answer the letter of the Boycott Authorities admitting that it has committed the violation mentioned in the letter and is ready to settle the matter by severing the violating relation. In this case, the Boycott Authorities will give the company the time needed for the settlement and no action will be taken against the company, unless it is proved that the company is trying to delay the settlement in order to avoid boycotting. The company may, on the other hand ignore the letter that it received and leave it unanswered within the reasonable time. In that case the question will be put to the Conference of the Arab boycott in order to take the decision of banning dealings with the company.

I would like to say in this connection that this arrangement excludes foreign companies or firms when it is proved by definite evidence that they, their proprietors or controllers have Zionist inclinations, such as continuous contributions of large amounts to Israel or other Zionist organizations, or such as joining Zionist organizations or societies, or such as working openly against Arab interests and promoting the interests of Israel or world Zionism.

No relations will be established with such companies because it was actually proved by experience that such companies take advantage of those relations in order to damage Arab interests and propagate world Zionism.

It is worth mentioning that in spite of the fact that hundreds of companies are put on the black list, the Boycott Authorities will challenge any claim that any company was so put unless that was based on a true basis and authentic facts. All through the history of the Arab Boycott not a single case was proved to be put on the black list on the basis of untrue or inaccurate information.

Is it possible to remove the name of a foreign company or firm from the black list?

Naturally it is possible to delete easily the name of any foreign company or firm from the black list.

The banned company can write to any of the Regional Boycott Offices in any Arab country or directly to the Central Office for the Boycott of Israel to inquire what documents are necessary in order to be excluded from the ban and to become able to resume activities in the Arab countries. As soon as this letter reaches any of the Boycott offices the answer to the company in question will be sent the same day, stating the necessary documents to be submitted. If the company produces the required documents fully and completely and if the documents are clear and correct, then it is possible to remove that ban within three months, as from the date of presenting the documents. Three months is not a long time, because those documents must be studied by the concerned Office; then they should be sent to the Central Office for further study and at the same time, the opinion of other offices in the Arab countries should be taken on the matter of removing the ban.

In the case of companies when the ban cannot be lifted except after a longer period of time, the reason for that is not due to the slowness or inefficiency of the Boycott Offices; it is always due to the delay on the part of the company concerned in submitting the necessary documents required by the Offices.

On the other hand, the Boycott Offices work with complete freedom and in compliance with the Boycott law and regulations. It is impossible to violate such laws at any circumstances or under any pressure from any source, regardless of the person exercising it. On the contrary, those Offices never allow such things to take place, and thank God they never did.

Finally, I would like to stress the fact that companies which settle their status and have their names deleted from the black list are seven or eight times as many as those whose names are on the list.

APPENDIX H

LEAGUE OF ARAB STATES,
CENTRAL OFFICE FOR THE BOYCOTT OF ISRAEL,
September 29, 1975.

BULOVA WATCH CO., INC.,
New York, N.Y., U.S.A.

GENTLEMEN: We are in receipt of your letter dated September 17, 1975 and are appreciating your request to know the documents you will have to present in order to enable the Arab Boycott Authorities to consider removing the ban imposed by your company and its subsidiaries, in the Arab world since 1960. In this regard, we wish to point out the following:

The reliable information we have acquired, which led to banning transactions with your company, indicate that the Bulova Foundation, which is financed by your company, gave a complete machine factory to Israel as a present and refused to give a similar factory to the Arab country despite our contact with it through our letter dated anuary 19, 1956. Therefore, the documents you will have to present are the following:

1. A declaration containing complete answers to the following questions:

Do you, the Bulova Foundation and/or any of their subsidiaries:

(*a*) Have now or ever had main or branch factories or assembly plants in Israel?

(*b*) Have now or ever had general offices in Israel for regional or international operations?

(*c*) Grant or ever granted the right of using their names, trademarks, manufacturing rights, patents, licenses, etc. . . to Israeli persons or firms?

(*d*) Participate or own shares, now or in the past, in Israeli firms or businesses?

(*e*) Represent or ever represented any Israeli firm or business in Israel or abroad?

(*f*) Render or ever rendered any technological assistance to any Israeli firm or business?

2. A statement showing the names and nationalities of all companies into which your company and the Bulova Foundation hold shares or with which they are associated, as well as the percentage or the shareholding as to the total capital of each of them.

3. A copy of the Articles of Association of the Bulova Foundation.

4. A statement showing the exact and detailed nature of relationship between your company and the Bulova Foundation either materially or morally.

5. An official copy of the Articles of association of your company.

6. A detailed statement showing all donations or subsidies given by the Bulova Fondation to Israel, including their present of watch or machine factory to Israel.

7. A document to the effect that your company, the Bulova Foundation, any of their subsidiary companies, their owners or the members of the Boards of Directors of all of the said companies are not joining any organisations, committees or societies working for the interests of Israel or Zionism whether they are situated inside or outside Israel; as well as the undertaking that of the above organisations, committees or societies or give or collect donations to any of them.

8. An undertaking to the effect that the Bulova Foundation will perform, in regard to donations, a similar action for the benefit of the Arab countries at least similar in volume and nature to what it presented to Israel.

We should draw your kind attention to the fact that all of the above requested documents should be duly certified by your chamber of commerce or industry, or executed before a notary public and then authenticated by the closest consulate or diplomatic mission of any Arab country. Moreover, the legalised originals of the said documents will have to be accompanied with an Arabic translation of each of them in 25 copies.

We remain,
Very truly yours,

MOHAMMED MAHMOUD MAHGOUB,
Central Office for the Boycott of Israel.

APPENDIX I

MPI McKEE-PEDERSEN INSTRUMENTS
P.O.BOX 322 · DANVILLE, CALIFORNIA 94526
Telephone: (415) 837-3630

INVOICE No. 3297 D-U-N-S 947-3133 Date AUGUST 28, 1975

Sold To KUWAIT UNIVERSITY
P.O. BOX 5969
KUWAIT, ARABIA

Customer's Order No. KU/26/S127

Salesman 5909/7

Terms LETTER OF CREDIT #80850 IRREVOCABLE SIGHT DRAFT

Ship To (SAME)

F.O.B. FACTORY, WALNUT CREEK, CA, USA

Via AMERFORD AIR CARGO

ITEM	QUANTITY	CATALOG #	DESCRIPTION — Part No.	UNIT PRICE	TOTAL
Merchandise is in accordance with Kuwait University 26/S127 SCIENTIFIC INSTRUMENTS				210-250V 60Hz	
1.	1	MP-1018B	MONOCHROMATOR WITHOUT GRATING & SCAN DRIVE	$1095.00	$1095.00
2.	1	MP-1018B-D	SCAN DRIVE FOR MP-1018B MONOCHROMATOR	295.00	295.00
4.	1	------	590 g/mm Grating, 1µm Blaze	205.00	205.00
5.	1	------	295 g/mm Grating, 2.1µm Blaze	205.00	205.00
6.	1	------	1180 g/mm Grating, 500nm Blaze	205.00	205.00
7.	1	------	2360 g/mm Grating, 270nm Blaze	305.00	305.00
8.	4	------	FACTORY ALIGNMENT OF GRATINGS IN MP-1018B	35.00	140.00
9.	2	MP-1035B	DEUTERIUM LAMP	110.00	220.00
10.	1	MP-1055A	DEUTERIUM LAMP POWER SUPPLY	285.00	285.00
11.	2	MP-1019	6V LIGHT SOURCE	95.00	190.00
12.	1	MP-1019A	6V POWER SUPPLY	225.00	225.00
13.	1	MP-1022-6V	BEAM SPLITTER	165.00	165.00
14.	1	MP-1025	OPTICAL FILTER SET	99.00	99.00
15.	1	MP-1017	SAMPLE FILTER HOLDER	79.00	79.00
16.	1	MP-1020A	MERCURY VAPOR LAMP	80.00	80.00
17.	1 SET	------	COMPLETE SET OF SPARE PARTS FOR: MP-1020A MP-1018B, MP-1019, MP-1019A, MP-1035A, MP-1035B	355.00	355.00
					$4168.00
			AIR FREIGHT		235.00
			INSURANCE		37.00
			FORWARDING, HANDLING & DOCUMENTATION		48.00
			DRAYAGE - FACTORY TO SAN FRANCISCO AIRPORT		50.00
			TOTAL CIF KUWAIT ---------- US		4489.00

PAID JAN 05 1976

a) NET WEIGHT IN KILOS: 33.077 Kgs.
Note: For net weight of each item in Kilos, please see reverse side of this invoice

c) AIR WAYBILL NO.:

d) NAME OF MANUFACTURERS: McKEE-PEDERSEN INSTRUMENTS

Spare Parts { GENERAL ELECTRIC; MOTOROLA; QUARZLAMPEN GESELLSCHAFT; NATIONAL SEMI CONDUCTOR }

MPI declares that it is not black-listed by Kuwait Authorities or a branch, sister concern or subsidiary of any company black-listed by Kuwait Authorities.

David N. Pedersen, President

ORDER COMPLETE. THANK YOU.

APPENDIX J

GENERAL MOTORS CORP.,
Detroit, Mich.

Mr. ARTHUR HERTZBERG,
President, American Jewish Congress, Stephen Wise Congress House,
New York, N.Y.
(Attention of Mr. Phillip Baum, Associate Executive Director).

DEAR ARTHUR: In accordance with our telephone conversation of today, I am enclosing a revised page two of my letter of February 20, 1976. Please note that the following sentences have been added to page two:

Added to the middle of the paragraph on Business or Trade Agreements: "It would be our intention to explore opportunities for ventures in other mideastern countries, including Israel, and we are not limited, nor would we agree to be limited, in any way in such exploration other than by the economics of the venture itself."

Added at the conclusion of the second paragraph on Arab Country Demands or Requests: "Our business policies and practices have not been affected by these inquiries."

I am impressed by the fine cooperation which your organization has exhibited in dealing with this very important and sensitive problem. I believe that the actions of recent months serve as an excellent example of what can be accomplished by organizations who are willing to work together in solving mutual problems.

Sincerely,

T. A. MURPHY, *Chairman.*

Enclosure.

EMPLOYMENT POLICY

Especially basic to the conduct of General Motors business is its long-standing worldwide policy against discrimination of any kind in employment practices. We extend employment opportunities to qualified applicants and employes on an equal basis regardless of age, race, color, sex, religion, political persuasion or national origin. In this connection, if a candidate selected for an overseas assignment were refused a visa on any basis, we would request the U.S. Department of State, through diplomatic channels, to seek entry for the candidate.

BUSINESS OR TRADE AGREEMENTS WITH ARAB COUNTRIES OR ISRAEL

Consistent with the above policies, General Motors sells its products to distributors, dealers and other customers in Israel and in Arab countries and "we participate in a recently established joint venture in Saudi Arabia which contemplates the assembly and sale of vehicles in that country. It would be our intention to explore opportunities for ventures in other mideastern countries, including Israel, and we are not limited, nor would we agree to be limited, in any way in such exploration other than by the economics of the venture itself." The nature of General Motors business is such that it is not usual for us to purchase goods or materials either from Israel or from Arab countries.

ARAB COUNTRY DEMANDS OR REQUESTS AND GENERAL MOTORS' POLICY AND PRACTICES WITH RESPECT TO COMPLIANCE

We are aware of no communication to General Motors or any of its officers or directors demanding or requesting that General Motors discriminate against any American corporation because of its having Jewish directors, stockholders, officers or employees. If there were any such demand or request it would be against General Motors' policy to comply.

Occasionally General Motors has received inquiries as to its relations with Israel, one of its Israeli distributors, or an Arab boycotted company. We have replied to these by furnishing the requested factual information in a reasonable

effort to avoid being placed on an Arab Boycott list, except that we have refused to supply nonpublic information. Our business policies and practices have not been affected by these inquiries.

General Motors has received occasional requests from Arab countries that it agree not to participate in future dealings with Israel or with Israeli companies. General Motors has made no such agreements and would not make any such agreements.

Just as any other American company doing business with Arab countries, General Motors also receives requests for certification as to: the origin of products involved in a particular transaction; the boycott status of the producer; and the origin and boycott status of the vessel transporting the goods. As you know, such requests are prerequisites to payment, consularization of documents and/or importation of products in particular transactions and we have generally complied with them on a factual basis. We don't believe that these types of certification by General Motors further the Arab boycott.

It has been brought to our attention, however, that our compliance with some of the above certification requirements is a source of concern to the AJC. We are, therefore, willing to endeavor to substitute the following certifications: The products are exclusively of U.S. origin; the producer of the products is General Motors Corporation; the producer of the products is _____; the name of the vessel is _____; and it is owned or chartered by _____.

We have, of course, no assurance that such changes would be acceptable to Arab countries.

Another certification which some Arab countries have required the exporter to furnish, when it is responsible for insuring the products being shipped, before the shipping documents will be consularized is a certificate issued by the insurance carrier stating that it is not on an Arab Boycott list. Consularization is a prerequisite to payment for the products. General Motors has furnished such a certificate issued by the company which has been its marine insurance carrier for more than half a century. We have been advised, however, that the insurance company will no longer issue such a certificate and we are endeavoring to have this Arab country requirement eliminated.

EXPORT ADMINISTRATION ACT

It is General Motors' policy to report to the Department of Commerce all requests received by it from Arab countries for actions that might have the effect of furthering or supporting a restrictive trade practice or boycott against Israel. We do not, however, report requests received from Arab countries (or from Israel as well) that products not be shipped on a vessel of Israeli (or Arab country) nationality or on a vessel calling at an Israeli (or Arab country) port en route to its destination. The U.S. Department of Commerce regards such requests as being reasonable precautionary measures to avoid the risk of confiscation of the products being shipped. In this light, the Department does not consider the requests to be restrictive practices which are required to be reported.

I appreciated the opportunity of talking to you and exchanging views on this sensitive and complex subject which affects and deeply concerns so many. We in General Motors believe our policies and practices have been, are, and will continue to be, proper and fair to all concerned.

I trust that my letter is responsive to the various items of information requested in the AJC's proposal and look forward to an AJC letter withdrawing the resolution. I know that you, as well as I, would much prefer to arrive at a posture which would avoid the appearance of our being in an adversary position. Such a position would likely appear, however, or be inferred, to be the case if the AJC proposal were to be included in our 1976 Proxy Statement and presented for discussion and action at the Annual Meeting. I feel assured that you share with me the conviction that the appearance of such a posture, which in fact does not exist, would not serve our best mutual interests.

Sincerely,

T. A. MURPHY.

ADDITIONAL VIEWS OF REPRESENTATIVES HENRY A. WAXMAN, JOHN E. MOSS, ANTHONY TOBY MOFFETT, JAMES H. SCHEUER, RICHARD OTTINGER, ANDREW MAGUIRE

The subcommittee's report, "The Arab Boycott and American Business," is the most comprehensive congressional review of the nature, scope, and impact of the Arab boycott on the United States since anti-boycott provisions were added to the Export Administration Act in 1965.

This subcommittee's investigation has opened the wall of secrecy which has surrounded much of the Arab boycott. The barest outlines of the scope of the boycott, and its gross economic impact on the United States, are now available. Billions of dollars in trade have been subjected to the boycott's discriminatory trade practices. But strikingly absent from this report—and obscured even today by Commerce Department policies—is the answer to the question of how many businesses have changed their business practices in order to comply with the boycott's restrictions and have in effect become tools in the Arabs' economic warfare against the State of Israel. Specifically: To what extent have businesses agreed to terminate their direct relationships with Israel in order to obtain contracts in the Arab world? To what extent have businesses agreed to refuse to deal with other American companies which have relationships with or are otherwise sympathetic to Israel? These questions remain unanswered because the Commerce Department has refused to prohibit compliance with these so-called secondary and tertiary aspects of the Arab boycott—even though there is a greater awareness of these activities, and even though their frequency and intensity is growing, and not diminishing.

Despite this inevitable shortcoming, this report is a damning chronicle of evasion and subversion by several administrations and, to a lesser extent, by the business community of the clear Congressional mandate opposing boycotts and restrictive trade practices. At the same time, this report repeatedly emphasizes that the profound issues raised by the Arab boycott—legal, political, economic, moral—remain unresolved to this day. It is our hope that this document will serve as a major impetus toward the passage of legislation which would at last prohibit business in the United States from complying with the Arab boycott.

Such a desire surely embraces the spirit of the law. As the Export Administration Act unequivocally states,

"It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries * * * and (B) to encourage and request domestic concerns engaged in * * * export * * * to refuse to take any action, including the furnishing of information or the signing of agreements, which has the effect of furthering or supporting the restrictive trade practices or boycotts * * *"

The Congress' meaning in establishing this policy in 1965 was clear. It reflected the judgment that compliance with the Arab boycott was repugnant to cherished American principles regarding freedom from discrimination and the operation of a free market. It sought to assure that this Nation would not compromise its basic values in the search for expanded trade opportunities throughout the world.

Nevertheless, the subcommittee's report has documented that the Department of Commerce, which was charged with enforcing this mandate, consistently undermined this policy to the extent that, over the years, the Arab boycott has been allowed to proceed with the full acquiescence and indeed the tacit encouragement of the U.S. Government. In particular:

For more than ten years, the Commerce Department's reporting forms of boycott requests explicitly stated that U.S. exporters are "not legally prohibited from taking any action" in support of the Arab boycott. Such a statement represented a clear singal to all U.S. exporters that compliance with the boycott carried no sanctions whatsoever.

Again, for more than ten years, the Commerce Department circulated to American businesses notices of trade opportunities which contained boycott

demands. The Commerce Department circulates such notices in order to encourage trade with other countries. By promoting trade opportunities which were contingent upon compliance with the boycott, however, the Commerce Department played an active, and central, role in promoting the Arab boycott in the United States.

Although the Export Administration Act requires all boycott requests, including the furnishing of information or the signing of agreements, to be reported to the Commerce Department, for over ten years the Department chose not to require U.S. exporters to report whether or not they had complied with such requests—even through the Department had the clear statutory authority to compel such information. Such a policy prevented the Department and anyone else from ascertaining the boycott's scope and its impact on the American economy.

Although the operations of banks, freight forwarders, and insurance companies are essential components of all export transactions, it was not until December 1975 that the Department's boycott regulations were broadened to encompass these concerns. For over a decade, in other words, letters of credit, insurance policies, and transportation arrangements for billions of dollars in exports were not subject to even minimal antiboycott requirements.

A distressingly clear pattern of passivity to, promotion of, and disinterest in enforcing the antiboycott policy of the United States by the Department of Commerce over a ten-year period is therefore plainly evident. Indeed, the four policies which have mentioned above were terminated only after vigorous initiatives were undertaken by members of this Subcommittee, and others in the Congress, with former Commerce Secretary Rogers Morton.

Even then, our efforts were vigorously rebuffed at first. In order to effectively ascertain the nature, scope, and impact of the Arab boycott on the United States, this Subcommittee subpoenaed from the Commerce Department boycott requests which exporters received from Arab League countries,—and which were required by law to be reported to the Department. For months, this Subcommittee was forced into contesting an unfounded claim of statutory privilege which Secretary Morton sought exercise over these reports, which this Subcommittee urgently needed if it were to fulfill its oversight responsibilities. Renowned scholars came before the Subcommittee and testified that Secretary Morton's position had no legal basis whatsoever under the statutes he cited or the Constitution.

But more importantly, Commerce Secretary Rogers Morton's four-month refusal to provide documents was consistent with the Administration's decade-long policy of acquiescence in and promotion of the Arab boycott. As the Subcommittee's report shows, the subpoenaed materials reveal that the Department exercised virtually no control over attempts by the Arab League to enforce boycott provisions against American business—although it had both the Congressional policy mandate and the statutory authority to implement it. Rather than correct these shortcomings over time, the Department failed to take any remedial steps.

We are forced to conclude that Secretary Morton's refusal for five months to comply with the Subcommittee's subpoena for Arab boycott information was nothing less than an attempt to cover up the Department's grave abdication of its responsibilities under the Export Administration Act.

There is therefore no question in our minds, after reviewing the entire record which the Subcommittee has developed, that the Commerce Department, with the approval of the highest levels of several Administrations, obstructed over a ten-year period the effective implementation of the antiboycott provisions of the Export Administration Act as expressed by both the Congress and by successive Presidents and Secretaries of State. Second, in that the Commerce Department has failed to move against the secondary and tertiary aspects of the Arab boycott, it may be fairly stated that such an obstruction is continuing unto this day.

This is, in our judgment, a matter of the most serious concern to the Congress and the American people.

The business community has exhibited an ambivalent response to the competing pressures which the existence of the boycott evokes. On the one hand, the pressure to comply with the boycott is enormous. The records indicate that upwards of 90 percent of all transactions subject to boycott demands were ultimately in compliance with them. Only in 2–3 percent of all cases has the boycott been deliberately evaded. Nevertheless, in coordination with the American Jewish Congress, more than two dozen corporations have publicly pledged to refrain from complying with the boycott.

On the other hand, in the absence of an express prohibition of compliance with the Arab boycott, and in the presence of government policies which actively encourage compliance with it in order to improve our balance-of-payments with the Arab oil-producing states, noncompliance with the boycott can only place those who adhere to such a policy at a competitive disadvantage. As Federal Reserve Chairman Arthur Burns has stated,

"The time has come for the Congress to determine whether it is meaningful or sufficient merely to "encourage and request" U.S. banks not to give effect to the boycott. It is unjust, I believe, to expect some banks to suffer competitive penalties for responding affirmatively to the spirit of U.S. policy, while others profit by ignoring this policy. This inequity can be cured if Congress will act decisively on this subject." (letter to Rep. Benjamin Rosenthal, June 3, 1976).

This dilemma, however, extends beyond the choices faced by the business community. The Subcommittee's report documents that at least $4.5 billion in trade with the Arab League in 1974 and 1975—and probably much more—has been held hostage to the Arab boycott. The Subcommittee staff further indicates that nearly half if not more of all trade with the Arab League—involving billions more—is currently being subject to boycott demands. It is clear that despite the increased attention which has been focused on the boycott, its influence appears to be growing and not diminishing.

The higher level of scrutiny has also revealed that the boycott is not monolithic or impermeable; rather, it has consistently been applied in an arbitrary and capricious manner. Ostensibly, the boycott's blacklist contains those firms who have contributed to Israel's economic growth or have an affiliation with another blacklisted firm. Since 1948, the Chase Manhattan Bank has served as Israel's agent in handling government bonds in the United States. General Electric supplies the Israeli Air Force with jet engines for the Kfir aircraft—Israel's first military jet. Despite the crucial role these two corporations play in Israel's economic and military security, both firms are not blacklisted and do extensive business in the Arab world. TWA, Myles Laboratories, and IBM are among the firms which do substantial amounts of business with both Israel and the Arab nations. Moreover, experience since the Arab oil embargo has been that obeisance to restrictive trade practices neither ensures improved trade relationships nor guarantees immunity from further economic reprisals. France, which went to extraordinary lengths to accomodate OPEC demands after the Yom Kippur War, has not had as great an increase in trade with the OPEC nations as the Netherlands and West Germany, which pointedly refused to alter their relationship with Israel.

It is therefore apparent that these corporations and countries, and others like them, are able to operate in such a manner precisely because their services are as indispensable to Arab needs as they are to Israel.

Therein, we believe, lies the key to breaking the Arab boycott's influence on our economy and society. American goods and services are the most sought after in the world. We currently account for 18 percent of all world trade. The Arab nations, who so desperately want to develop their societies, are increasingly relying on American resources. The United States now accounts for 40 percent of the additional trade which the OPEC nations have undertaken since the quadrupling of oil prices in 1973. This relationship, instead of being characterized by discriminatory demands that are alien to our traditions and law, should instead dictate that, as a condition of its continuance, no such demands will be tolerated.

It remains that compliance with the Arab boycott is still not prohibited by law. We therefore urge that the Export Administration Act be amended to prohibit all agreements to refrain from doing business (1) with a foreign country friendly to the United States, and (2) with a company or supplier boycotted by a foreign concern, thereby furthering a foreign-imposed boycott or restrictive trade practice. We also urge the Congress to amend the Export Administration Act to prohibit business from furnishing the information the Arab League uses to enforce its boycott demands. Both of these recommendations are contained in the Subcommittee's report.

Whether the Congress will finally declare these practices illegal is another facet of the long-standing debate over whether the conduct of our foreign policy—in which economic relationships are the substructure—will be consistent with our ideals. It does little good—indeed it does much harm—to voice opposition to the boycott while winking at compliance with its demands. Both our credibility and our true intentions are called into questions. Rather than mortgage our prin-

ciples— nestically and in our support for the State of Israel—it is time that we e the leverage and suasion we command in the Persian Gulf. Rather than succumb to discriminatory demands imposed by foreign governments against American citizens, it is time this Nation repudiate them once and for all.

This is our hope, and the policy to which we are committed.

We the undersigned also join with the views expressed by Chairman Moss responding to the minority opinions of Representatives Collins and Lent.

HENRY A. WAXMAN,
JOHN E. MOSS,
ANTHONY TOBY MOFFETT,
JAMES H. SCHEUER,
RICHARD OTTINGER,
ANDREW MAGUIRE.

THE VIEWS OF REPRESENTATIVE JOHN E. MOSS, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

The subcommittee's report on "The Arab Boycott and American Business" is the most comprehensive review of the nature and scope of foreign imposed boycotts yet made. However, the views of the minority necessitate an additional response.

The facts in this report show that the Commerce Department failed to collect complete data from exporters and to convey accurate, meaningful information about foreign imposed boycott practices in the Department's quarterly and special reports to Congress. Furthermore, the Department all but failed to make use of the broad powers Congress gave it under the Export Administration Act to protect American business from being used as a tool of the economic warfare of foreign concerns.

The actions of former Commerce Secretary Rogers C. B. Morton to stonewall the subcommittee by refusing to comply with the subcommittee subpena for the Export Administration Act boycott reports merely served to cover up malfeasance and nonfeasance on the part of the Administration. It is to Mr. Morton's credit that he ultimately complied with the subcommittee's subpena, albeit one day before the subcommittee's contempt resolution was scheduled for action by the Committee on Interstate and Foreign Commerce.

The recommendations in the subcommittee's report are conservative measures designed to preserve the sovereignty of the United States. They seek to carry out the policy declaration codified in an act of Congress eleven years ago.

As long as United States interests are not affected, we as a Nation should not intercede when one foreign country seeks to boycott another. The subcommittee recommendations are directed merely towards protecting American business from foreign imposed restrictive trade practices. Foreign powers should not be allowed to dictate commercial practices in this country.

The issue of religious freedom was resolved in this land with a revolution two centuries ago. However, the current Administration's position, represented by minority view signed by James Collins (R-Texas), oppose our recommendations and in effect says, "Yes, we as a Nation are committed to free trade and freedom from religious discrimination; but we don't want to lose any petrodollar trade." That position should be totally unacceptable to all Americans for several reasons.

First, our principles as a people are not for sale. Secondly, the theory advanced on behalf of the Administration that the United States would lose trade is highly speculative, as the Subcommittee report points out. This country regards Arab League countries and Israel as our friends. We remain deeply committed to the economic development of Israel and the Arab Nations. Our respect for Arabs and Israelis will not be altered by the adoption of the legislative proposals contained in this report.

The sum of the views of the gentleman from Texas would have us abandon all principles, ignore our own laws, consent to the meanest sort of discrimination in exchange for profits. No one disagrees with the need for profitable trade. But to gain that kind of commerce at the sacrifice of principles is far too high a price for any nation to pay. In this creative world that would ultimately be torn apart in a climate of fear, hate and avarice, such a doctrine should be summarily rejected as being unacceptable.

Both Messrs. Collins and Lent state that they agree with the position taken by former Secretary of Commerce Rogers C. B. Morton in refusing to comply with the Subcommittee's subpoena. In fact, Mr. Collins says he has "rechecked the Constitution of the United States paying particular attention to those powers granted unto Congress" and finds no reference to any power given to Congress to interpret a statute. Let me, for the benefit of Mr. Collins, recheck the Constitution again for him.

Article I, Section 1 of the Constitution provides that "All legislative powers herein granted shall be vested in a Congress . . ." Inherent in the legislative power is the power to obtain information and punish those who do not provide such information. The text of the Constitution reflect this power in Article I, Section 5(2) (relating to determination by each House of its own rules) and Article I, Section 8(18), the "necessary and proper" clause. Inherent in the power to hold an individual in contempt of Congress is the power—the necessity—to interpret whatever defenses may be raised by an alleged contemptor.

The initial determination, the determination which provides the condition precedent to any appropriate court review, is made by the Congress under our constitutional system. Namely, the court will only review a question once an actual controversy has ripened between two actively adverse parties, a condition which would exist upon a contempt vote by the House.

The Congressional duty to ascertain whether laws are being "faithfully executed" before it considers amending those laws or enacting new ones has been upheld by the Supreme Court in a long line of cases from 1971 to 1975. In the landmark case of *Watkins* v. *United States*, 354 U.S. 178, 187 (1957), the Court said:

"The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruptions, inefficiency or waste."

To oversee the administration of Federal laws and to investigate matters which may need legislation. Congress clearly has the power to use compulsory process, i.e., to issue subpoenas for documents, compel testimony (except when it would be self-incriminating), and have such testimony taken pursuant to laws providing for prosecution of perjury. The rationale for compulsory process is summarized by the Supreme Court in *McGrain* v. *Daugherty*, 273, U.S. 135, 175 (1927):

"Experience has taught that mere requests for information often are unavailing, and also that information which is so volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed * * *"

To carry out its legislative duties, the Supreme Court has long recognized congressional contempt powers because:

"Here, we are concerned, not with an extension of congressional privilege, but with vindication of established and essential privilege of requiring the production of evidence. For this purpose, the power to punish for contempt is an appropriate means." *Jurney* v. *MacCracken*, 249 U.S. 149, 150 (1935).

It would be of little value to discuss this issue further at this time. For the benefit of Mr. Collins, I would merely ask that he carefully read the Constitution.

As for Mr. Lent, he too, like Mr. Collins, offers the same blind allegience to the chief attorney for the Executive, Mr. Levi. Mr. Lent argues on behalf of Mr. Morton:

"The Secretary, not being a lawyer himself, was relying on the advice of his counsel, Attorney General of the United States, that a law passed by Congress precluded him from submitting the requested material."

This argument is baseless. Relying on the views of counsel is not an acceptable excuse for violating a law. See *Sinclair* v. *United States*, 279 U.S. 263, 299 (1929):

"There is no merit in appellant's contention that he is entitled to a new trial because the court excluded evidence that in refusing to answer he acted in good faith on the advice of competent counsel."

Numberless common criminals have gone to prison contending that they had only followed the advice of counsel.

Mr. Lent suggests that it was possible to resolve this dispute in a "quite simple way" by enacting new legislation to amend Section 7(c) of the Export Administration Act to expressly state that Congress is not precluded from information gathered pursuant to that act. That would be a dangerous concept that would clearly establish the doctrine that Congress is precluded from information by implication absent express statutory language to the effect. If that doctrine were to hold, Congress would be precluded from information compiled pursuant to more than 100 statutes which provide for confidentiality but do not expressly state that Congress is barred from obtaining that information to perform its legislative work. Such a doctrine would seriously undermine Congress' constitutionally mandated duties, a situation the majority of this Subcommittee voted not to permit.

Mr. Lent states that the Subcommittee could have considered Congressman Rinaldo's recommendation that the Subcommittee seek a declaratory judgment from the court. However, Mr. Lent knows that the Chair explored that alternative and sought a legal memorandum on that subject from the American Law Division of the Library of Congress. That memorandum concluded that based on past cases, the court would not grant a declaratory judgment as long as other remedies were available. The remedy available was, of course, a contempt proceeding. The memorandum concluded that the only way a court would grant judicial review was in the case of an actual controversy, namely, the finding of Secretary Rogers C. B. Morton in contempt of Congress by the House of Representatives. Accordingly, Mr. Lent knows full well that the remedy of a declaratory judgment was not available.

Mr. Lent also states: "The most preposterous and misleading statement in the report is the claim that our Subcommittee found Mr. Morton 'in contempt' of Congress." Facts are facts, Mr. Lent, and the fact is that the Subcommittee did find Secretary Morton in contempt.

By a vote of 10 to 5, the Subcommittee also directed me as its Chairman to report the facts surrounding the Secretary's contempt to the full Committee for appropriate action. The need for the Committee on Interstate and Foreign Commerce to consider a contempt resolution became moot when Mr. Morton ultimately agreed to comply with the Subcommittee's subpena.

Mr. Lent dislikes the subsection in the report recounting the contempt proceeding, stating: "I object to the tone, character, and substance of this discussion." He believes that reporting that former Commerce Secretary Morton was found in contempt of Congress by the Subcommittee "unnecessarily sullies the good name of an outstanding public official—a former Member of the House of Representatives." I am sorry Mr. Lent views the facts that way. I can only advise him that if any person—private citizen or public official—wants to avoid being found in contempt of Congress, they should avoid acts which would support that charge as was the case with former Secretary Morton.

Mr. Lent was kind enough to offer a letter from Mr. Morton for this record. Accordingly, I am pleased to supply the other half of that correspondence, attached to this statement as Appendix A.

RELIGIOUS DISCRIMINATION

Mr. Collins states: "Even the Subcommittee Report takes cognizance of the fact that acts of discrimination do not characterize the Arab Boycott. Only 15 such religious/ethnic clauses were discovered by the Subcommittee Staff's intensive nine-month review." Not true! The Subcommittee report sets forth facts showing that religious discrimination has been a part of the Arab boycott. If Mr. Collins had read the report he could have noted that it states that it is not possible to quantify exactly how pervasive acts of religious discrimination have been because persons have been reluctant to report them and because of loopholes in Commerce Department reporting regulations. Accordingly, Mr. Collins obviously overlooked the report's conclusion that "a significantly greater number of requests of this type may well have been received by U.S. business concerns but not reported."

INTERNATIONAL IMPLICATIONS

Mr. Collins objects to the following sentence used in a section of the report: "The United States has a major competitive advantage in agricultural products and a wide variety of manufactured products." This statement is based, inter alia, on the commodity data extracted from the Export Administration Act boy-

cott reports showing that some U.S. products, such as agricultural products, have been relatively unaffected by the boycott. Mr. Collins must also know that several American military weapons manufacturers are not boycotted even though they sell their arms to Israel. The report points out that in addition to political factors, "these trends apparently reflect Arab business judgments also based on the quality and prices of the goods sold by major exporters."

The report does not, as Mr. Collins suggests, treat this subject in a "cavalier" fashion. The report states that it "is difficult to estimate with certainty how Arab countries would perceive Congressional action to protect against another country friendly to the United States."

The point that escapes Mr. Collins, and the Administration his views represent, is the view of the Subcommittee majority that America's sovereignty and sense of justice is not for sale.

JOHN E. MOSS, *Chairman.*

Also signed by Representatives Waxman, Moffett, Scheuer, Otinger, and Maguire.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., November 26, 1975.

Hon. ROGERS C. B. MORTON,
Secretary of Commerce,
Washington, D.C.

DEAR MR. SECRETARY: I too deeply regret that it finally became necessary to move in the Subcommittee to enforce the subpoena duces tecum issued on July 28, 1975. Though your decision to refuse to comply with the duly issued subpoena of this Subcommittee was made only after seeking the advice of your own counsel and the Attorney General, I can only regret that this issue is joined between former colleagues.

Mr. Secretary, as a former Member of the House of Representatives, I know that you can appreciate the fact that there are stages of committee action which effectively preclude reconsideration on the part of a Chairman. That point has been reached by the Subcommittee on Oversight and Investigations. The matter now is on the agenda of the full Interstate and Foreign Commerce Committee, and I am under instruction to call it up for a vote.

I believe, however, that more important than the parliamentary situation is the fact that the Congress cannot accept the opinion of the Attorney General, who in this instance is acting as an advocate of the position which had its origin with your departmental solicitor, Karl Bakke. If you will refer to the testimony of Philip Kurland, he sets forth with great precision the chronology of the development of the legal position which was urged upon you and finally adopted as yours in your appearance before the Subcommittee.

You may recall, Mr. Secretary, that following your first appearance and your first refusal to comply, out of an abundance of caution, I engaged the services of a distinguished constitutional scholar, Professor Raoul Berger, Warren Professor of American Legal History at Harvard Law School, as consultant and adviser to the Subcommittee on this question.

Additionally, I requested the testimony of Philip Kurland, another distinguished constitutional scholar at the University of Chicago and a consultant to the Senate Committee which instituted the original Watergate investigations. The Subcommittee then sought from Professor Norman Dorsen of New York University, a recognized expert in the field of constitutional law and its common law antecedents, his best advice and judgment. The record is quite clear that in every instance these distinguished scholars found: (1) That the confidentiality provision of Section 7(c) of the Export Administration Act could not through any normal construction of law apply to the Congress of the United States or either House thereof; (2) that the action of the Subcommittee on requiring production of the material by subpoena was appropriate and consistent with the powers and precedents of the House of Representatives and the tradition which we inherit from common law and the British Parliament; and (3) each agreed that this was an issue the House could not permit the Executive to prevail on unless it was willing to cede to the Executive branch its essential powers to exercise necessary oversight of the laws enacted by it.

We have explored at your suggestion the two alternatives proposed by you, and it is with the very deepest of regret that I must inform you that neither is

appropriate or acceptable. While I appreciate your desire to seek court review of this matter, the most expeditious and, in my view, exclusive vehicle for bringing this issue to the courts is contempt. That process has begun. Within days of the action of the Interstate and Foreign Commerce Committee, a justiciable controversy will exist which may be considered by the courts either in a habeas corpus action or in an action under 2 U.S.C. § 192. Though we might wish for another way of addressing this question, the law is clear.

As to your second proposal, it is unacceptable. On the practical level, restriction of these documents to the Members of the Subcommittee and its staff would raise the most serious issues of congressional responsibility. I have noted in our discussion that the boycott may very well involve violations of the Federal Trade Commission Act and the Securities Exchange Act. Acceptance of your condition would preclude this Subcommittee from releasing this data to Federal prosecutors if violations of law were discovered. Such an incongruous result cannot be squared with the constitutional duties of the Congress.

Further, your condition would place unconstitutional limits on the authority of the Congress to discharge its legislative and oversight responsibilities. It may become necessary in the discharge of our constitutional duties to hold public hearings on the issues raised by these materials. As you know, the House of Representatives has always been characterized as the people's house and the grand inquest of the nation. To subordinate our legislative and investigative authority to such terms and conditions as the executive may determine is to cede to the executive a paramount role not envisioned by the Constitution. This I cannot do.

I am deeply mindful, Mr. Secretary, of the responsibilities which I assumed upon taking my oath of office, an oath which you also took when a Member of this House. As you know, its demands are emphatic: that we "uphold and defend the Constitution" * * * In the documents which you have already reviewed, Professor Kurland states:

"To the extent that Congress has acceded to Executive branch denials on the withholding of information it has failed to enforce its authority and has vacated its power to inquire * * *

"I urge this subcommittee not to contribute to the continued destruction of congressional authority. The constitutional plan of checks and balances, an essential safeguard for American liberties, is constantly endangered by failure of Congress to assert its authority vis-a-vis the Executive. I trust that this case will not prove another instance of such surrender; the rights at stake are not those of individual Congressmen, they are the rights of the American people whose representatives you are."

I believe that the sobering experiences of the previous Administration require all of us to be mindful of our Constitutional system and the particular need for the Congress to be free to exercise fully its powers and discharge its responsibilities to the American electorate. In this period in which the highest executive officials of our government are appointed, not elected, it is critical that the elected representatives of the people prevail, however distasteful the stage-by-stage procedure is to both of us.

While I most emphatically submit that it is not in the national interest for the Congress to make any pledge to the executive as to how it will use the material, I must also state that our handling of this material will be nothing less than responsible. That assurance I give you. But, we must remain free to initiate open public hearings should a review of the material indicate to me and the Members of the Subcommittee that such hearings are necessary or desirable to secure full compliance with the laws and policies of the United States. I must remind you that as recently as November 20th, President Gerald R. Ford publicly addressed the grave dangers of conforming to a pattern of acceptance of boycotts instituted by forces outside of this country. My concern is no less.

Accordingly, I will seek the earliest possible consideration in the full Committee of the motion to recommend to the House that you be found in contempt of the House of Representatives. After consideration of this question in full Committee, I assure you that I will exercise the high privilege accorded such a motion so that it will be considered on the floor promptly.

I reiterate these steps which I will take, will be taken with no intent to embarrass or harm you or with any sense of diminished respect for you as an individual. I take them because I must, in order to preserve the rights of the people's representatives to inquire and to exercise their unfettered judgment.

Sincerely,

JOHN E. MOSS, *Chairman.*

Additional Views of Representative Norman F. Lent

I have reviewed very carefully the Subcommittee report on the "Arab Boycott and American Business." The report is thought provoking, and at times particularly disconcerting to me, and I am in support of its recommendations. In fact, on April 8, 1976, I cosponsored Rep. Koch's "Foreign Boycotts Act," H.R. 13125, which would implement many of our recommendations.

But I feel compelled to address myself to certain aspects of this report with which I simply cannot agree. These aspects relate principally to the discussion in the report of former Secretary of Commerce Rogers C. B. Morton, and his refusal to furnish to the Subcommittee the U.S. Exporter Reports which were subpoenaed on July 28, 1975.

The most preposterous and misleading statement in the report is the claim that our Subcommittee found Mr. Morton "in contempt" of Congress, and that "It was the first time that a member of the President's Cabinet had been found in contempt of Congress, according to legal historians at the Library of Congress." (See Chapter 1, "Contempt Proceedings").

Before discussing the points that I take exception to in more detail, I would like to make some general comments concerning the Arab Boycott so that there will be no misunderstanding or misinterpretation of my later comments. As I have stated in the past, I am opposed to the Arab Boycott of Israel and the Arab Boycott of firms in this country doing business with Israel. This boycott, and the devices and machinations used to implement it, are abhorrent and insidious. A boycott runs clearly counter to the principles of non-discrimination and freedom of choice which Americans should, must, and do hold dear. I note parenthetically that the Ford Administration is also opposed to this boycott and has taken meaningful steps to frustrate it.

Given my objections to this boycott, and evidence which has come to my attention concerning its breadth and impact, I joined many of my colleagues in the House in sponsoring H.R. 13125, the Koch "Foreign Boycotts Act", which is similar in thrust to the recommendations advanced in the Subcommittee report. The Koch Bill strengthens the Export Administration Act of 1969 which makes it the national policy of the United States to prevent American firms from participating in economic boycotts imposed by foreign countries against other nations friendly to the United States. It also improves the disclosure provisions of the Securities Exchange Act of 1934.

My primary reason for taking the opportunity to present these additional views is to register my strong exception to those parts of the report that discuss Secretary Morton's postion with respect to compliance with the Subcommittee's subpoena calling for the production of the so-called "Arab Boycott Reports". I object to the tone, character, and substance of this discussion.

The subcommittee report accurately points out that the Subcommittee authorized a subpaena for these reports on July 28, 1975, which subpoena was served upon the Department of Commerce on July 28, 1975. This subpoena (94–1–56) required Secretary Morton to deliver all reports filed since December 31, 1969, with the Office of Export Administration pursuant to Section 369.2 of the Export Regulations (15 CFR § 369.2). The return date for the subpoena was September 4, 1975. The Secretary was advised by the subpoena that he would not be required to personally appear before the Subcommittee with the requested documents on that date if the documents were made available to the Subcommittee by August 5, 1975.

Secretary Morton did not provide the documents to the Subcommittee by the August 5, 1975, date. Shortly after the receipt of the subpoena, the Secretary sought the advice of Department attorneys familiar with the Export Administration Act as to whether or not he could legally provide this material to the Congress. His counsel advised him that in his considered judgment that Section 7(c) of the Export Administration Act precluded his compliance with the subpoena. Section 7(c) provides as follows: "No department, agency, or official exercising any functions under this Act shall publish or disclose information obtained hereunder which is deemed confidential or with reference to which a request for confidential treatment is made by the person furnishing such information, unless the head of such department or agency determines that the withholding thereof is contrary to the national interest." (50 U.S.C. Sec. 2406(c))

Having received the advice of his Department's counsel on the legal issues involved, the Secretary sought a second legal opinion. On August 22, 1975, the Secretary wrote to Attorney General Levi requesting his opinion on the issues

raised by the subpoena. On September 4, 1975, the Attorney General advised the Secretary in a written legal opinion (Hearing Record, Serial No. 94–45, p. 172) that the confidentiality provisions of Section 7(c) were applicable to Congress, and that he was not required to disclose the requested reports, unless the Secretary determined that withholding was contrary to the national interest.

As you will note, Section 7(c) set out above, does not in any way specify that Congress is exempted from the confidentiality provision. That being the case, the Commerce Department's Counsel and the Attorney General turned to the legislative history of the Act for some indication as to whether or not Congress had intended to exclude itself from the provision prohibiting disclosure. Both found in the legislative history that Congress did fall within the ambit of that prohibition.

Developing the chronology of events in this matter further, I point out that the hearing at which the Secretary was to appear on September 4, 1975, was postponed, and he actually appeared before the Subcommittee on September 22, 1975.

At his appearance on September 22, 1975, the Secretary was asked wehther he had brought with him the subpoenaed documents in the following exchange with Chairman Moss:

"Mr. Moss. Have you brought with you the reports called for by the Subpena dated July 28, 1975?

"Secretary Morton. No; we have not.

"Mr. Moss. Is there any physical or practical reason why these materials have not been provided?

"Secretary Morton. The materials have not been provided because we have been given an opinion by the Attorney General not to make them available."

The Secretary, not being a lawyer himself, was relying on the advice of his Counsel, the Attorney General of the United States, that a law passed by Congress precluded him from submitting the requested material. The Secretary was merely trying to obey the law that was given to him to administer. I made this point at the September 22, 1975 hearing in the following exchange:

"Mr. Lent. It seems to me that what we are trying to do here is to fault the Secretary for obeying a law enacted and reenacted and reenacted again by the Congress of the United States. It would seem to me that, as much as I would like to get this information and all of it because I am opposed to this Arab boycott, this committee in my opinion is not above the law, Mr. Chairman. We are as much bound by this law as is any citizen of the United States and as is any Secretary of Commerce or any member of the Cabinet of the United States.

"Now, I would say this: That if the Congress does not want itself bound by the confidentiality requirement of section 7(c) of the Export Control Act, we could say so. I would like to offer right now to introduce, and I would like the chairman of the committee to cosponsor, an amendment to section 7(c) which would permit the Secretary to make a full disclosure without violating the law."

"Mr. Moss. Would the gentleman yield?

"Mr. Lent. Just a second. If the chairman would be good enough to cosponsor that amendment with me, I am a member of the minority although we have been accused here of trying to run the committee. I don't think that really makes much sense in watching the give and take here.

"With the chairman's obvious legislative expertise and the fact that he is a member of the majority party, I think we could probably get that bill through in very quick order and then we could come back here and perhaps do something productive instead of indulging in this demonstration of moral indignation, righteous outrage, and histrionics.

"I now yield to the chairman.

"Mr. Moss. The Chair will wait until the gentleman has concluded in the pursuit of his own time."

At this September 22, 1975, hearing, the Subcommittee Chairman produced two legal opinions which took exactly the opposite legal conclusion, that being that no statute could preclude Congress from obtaining information needed to carry out its oversight responsibilities. These legal opinions were written by Subcommittee staff counsel and attorneys with the Library of Congress. So, what we had at this juncture was a legal dispute with two entirely different legal positions as to the interpretation of a statute. As I noted in the reproduced exchange above, there was a quite simple way of resolving this question. The solution in my mind was to amend the section of the law in question to allow for Congressional access.

One week subsequent to this hearing, I introduced H.R. 9932 co-sponsored by Representatives Madigan, Rinaldo, Broyhill, and Heinz which provides as follows: "That Section 7(c) of the Export Administration Act of 1969 (50 U.S.C. App. 2406(c)) is amended by adding at the end thereof the following new sentence 'no information obtained under this action may be withheld from Congress'."

I made this recommendation because I believed that Congress should be granted access to this material. I did not, and still do not, see the need for a major political confrontation between the Executive and Legislative Branches of Government when the problem could more expeditiously be remedied by simple legislation.

The provision that I suggested be added to Section 7(c) is already in many statutes passed by Congress. It is not novel or far-reaching, and Congress would be doing nothing more than Congress has already done in the past.

My colleague from New Jersey, Congressman Rinaldo, also recognized that the problem with Secretary Morton's compliance with the Subcommittee subpoena was one which the Subcommittee could not resolve, and he suggested an alternative solution to this legal dilemma. Congressman Rinaldo's recommendation was that the Judicial Branch should decide which of the two parties' interpretation of the statute was correct. This could have been done promptly, and the branch of this government which is solely charged with interpretation of statutes could decide the case. Mr. Rinaldo made this point quite succinctly in the following exchange with Secretary Morton:

"Mr. RINALDO. The only question as far as I am concerned is whether you, Mr. Secretary, are on firm legal ground in your interpretation of that statute; that is, the interpretation as given to you by the Attorney General of the United States of America, and whether in refusing this subcommittee the documents it has requested you are in compliance with the law as it should be interpreted.

"I see that you nodded you head so I presume that you agree with me. The telling point to my mind is the legislative history of the act. That has also been mentioned, along with the fact that Congress tried to amend this act to exempt itself from the confidentiality strictures. Why should an attempt to amend be made I ask rhetorically, if the Congress already had the right to know?

"I suggest, Mr. Chairman, that under the provisions of this act Congress did not reserve to itself the right to know and the right to obtain the documents we seek. The history of attempted amendments to this act shows this clearly. I can even argue that point of law. But the solution, in my opinion, does not lie in my arguing one point or someone else arguing another point. I am not going to belittle the document that the chairman has obtained from the Library of Congress. I believe that certainly the attorneys who prepared that opinion were just as sincere in their beliefs and their interpretation of the law as the Attorney General.

"I think I for one have to admit that it appears to me that we are hung up here. You have a viewpoint, Mr. Secretary, and you are completely proper in relying on the opinion furnished you by the Attorney General. The chairman of this committee is completely proper in my opinion in relying on the document that he has which gives a contradictory legal opinion. He has received this document from a reliable source, the Library of Congress. We could go on and on ad infinitum with a lot of lawyers and nonlawyers arguing sincerely for what they believe should be the proper course of action.

"In my opinion, the proper forum for a decision on a point of law where there are so many valid arguments on both sides of the issue is not here but in the judicial branch of Government. What I am going to suggest is that perhaps we should petition the proper forum, the court, for a declaratory judgment, and perhaps in that fashion get a decision that will clear this matter up once and for all by a body that is in a position to interpret the law and the conflicting legal arguments.

"Mr. Secretary, if this issue were presented to the proper forum in the judicial branch, and if that forum determined that Congress did have access to that information, would you then furnish the material?

"Secretary MORTON. Yes, indeed.

"Mr. RINALDO. Thank you, Mr. Chairman."

As will be noted, the above exchange clearly indicates that Secretary Morton would abide by a court decision. The Secretary reiterated this position in a letter to our Subcommittee Chairman on November 24, 1975 (Hearing Record, p. 185).

The next step in this chronology of events was the testimony before the Subcommittee of three law school professors. These three professors took issue with the Attorney General's legal ruling, and opined that Congress was not prohibited by Section 7(c) from receiving this material. All this testimony proved was that there could be different interpretations of the intent of the same statute. The Attorney General is a legal scholar of no small repute, and his opinion was different from other lawyers. There is nothing very unusual about that set of facts. It happens all the time; that is why we have a Congress with the power to amend laws and courts to interpret statutes passed by Congress.

The Subcommittee Chairman sent to the Attorney General the statements of the three professors as well as the transcript of the hearing at which they testified.. The Attorney General reviewed this material, and after having reviewed it, wrote to Chairman Moss confirming his earlier opinion (a copy of this letter is attached as Appendix I).

The Subcommittee report indicates that Secretary of Commerce Morton was found "in contempt of Congress." This is a vast overstatement of what happened on November 11, 1975, and unnecessarily sullies the good name of an outstanding public official—a former Member of the House of Representatives (1963–71)—who carried out his responsibilities as Secretary of Commerce under the law as he was advised by eminent counsel. It is the prerogative of the House of Representatives to find persons in contempt of Congress, not a subcommittee thereof. Before contempt proceedings could even be instituted before the House, the full Committee on Interstate and Foreign Commerce would first have to consider the question.

I voted with the other minority members against the contempt resolution in Subcommittee not because I favored the "Arab Boycott", but because a Congressional contempt proceeding is the worst possible way to resolve a problem of this type. Preferably, problems of Congressional access to information in the possession of the Executive Branch should be resolved by enacting clear and unambiguous legislation, or by court proceeding, just as they have been in the past.

APPENDIX I

THE SECRETARY OF COMMERCE,
Washington, D.C., November 24, 1975.

Hon. JOHN E. MOSS,
Chairman, Subcommittee on Oversight and Investigations, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I deeply regret the vote by your Subcommittee to refer to the House Committee on Interstate and Foreign Commerce a citation for contempt based on my declining to disclose copies of the reports which you have subpoenaed. I have stated from the very outset, that I was not relying on a claim of executive privilege in declining to comply with your subpoena, but on the statutory mandate contained in Section 7(c) of the Export Administration Act. There is apparently an honest disagreement between the Attorney General of the United States and your witnesses as to the correct legal interpretation of the scope of the confidentiality of Section 7(c).

Mr. Chairman, I believe that this disagreement cannot, and should not, be resolved in a political forum. Both of us are dedicated to upholding the laws of the United States, and should therefore deplore a resolution of this issue on a political basis. This disagreement is strictly a legal issue, and as such, should be decided by the courts. As you know, I have publicly stated that I would fully abide by a decision of the courts and I am sincerely puzzled by your rejection of this avenue. I would like to ask that you reconsider your decision in this regard.

I feel that there is also another way for us to avert a political confrontation. On September 22, during my appearance before your Subcommittee, a member thereof raised the possibility that such documents might be submitted to the Subcommittee on a confidential basis. During his testimony before your subcommittee, Professor Kurland, one of the three witnesses whom you selected, stated that, in all fairness to the reporting companies who have submitted sensitive commercial information under an express pledge of confidentiality, the Subcommittee should not disclose the information contained in these reports.

I am prepared to make the national interest determination required under Section 7(c) of the Export Administration Act and deliver copies of all the reports which you have requested, if you give me adequate written assurances on behalf

of your Subcommittee that access to these documents and the information contained therein (including the names of the reporting companies) will not be disclosed to anyone other than the members of the Subcommittee and its staff, and that the Subcommittee will take adequate measures to assure that the confidentiality of this information will be safeguarded by those persons having access thereto.

I would ask you to give serious consideration to this approach, which would provide the Subcommittee with all the information it has requested, as well as honor the pledge of confidentiality under which the information was obtained from its citizens by the United States Government.

In closing, let me assure you of my sincere desire to find a way in which we can settle this issue to our mutual satisfaction. I hope that you will consider the two avenues which I have suggested as a means of avoiding a political confrontation, in the same spirit in which I have proposed them. It is, I believe, extremely important to the welfare of our Government and of the Nation that differences which arise between the legislative and executive branches be resolved in a fair and amicable manner and I will appreciate hearing from you at your earliest convenience.

Sincerely,

ROGERS MORTON,
Secretary of Commerce.

MINORITY VIEWS OF REPRESENTATIVE JAMES M. COLLINS

At the very outset of these views, I wish to make it abundantly clear that I find totally abhorrent discrimination based upon race, religion, creed, or national origin. That being the case, I hold no brief for the "Arab Boycott." I believe, however, that the answer to the problems caused by this boycott cannot be ameliorated by the restrictive legislation that is being considered by the House and the Senate at this time, nor by the legislative recommendations in the Subcommittee Report. In fact, I believe that such legislation may in the final analysis prove counterproductive and defeat the goals and purposes of those well-intentioned individuals who are currently espousing these legislative remedies.

The ultimate answer to the "Arab Boycott" problem lies not with restrictive legislation but with progress towards a just and lasting peace in the Middle East. I am not for one moment suggesting that until that peace, that we all hope and pray is achieved, we do nothing about boycott practices. This has clearly not been the case with respect to the Ford Administration. Secretary of the Treasury, William E. Simon, testified before the House Committee on International Relations on June 9, 1976, and he identified in his testimony the many positive steps taken by the Administration and I reiterate those meaningful efforts at this juncture:

"In February 1975, President Ford issued a clear statement that the U.S. will not tolerate discriminatory acts based on race, religion or national origin.

"The President followed this in November 1975 with an announcement of a series of specific measures on discrimination:

"He directed the heads of all departments and agencies to forbid any Federal agency in making selections for overseas assignments to take into account exclusionary policies of foreign governments based on race, religion or national origin.

"He instructed the Secretary of Labor to require Federal contractors and subcontractors not to discriminate in hiring or assignments because of any exclusionary policies of a foreign country and to inform the Department of State of any visa rejections based on such exclusionary policies.

"He instructed the Secretary of Commerce to issue regulations under the Export Administration Act to prohibit U.S. exporters and related service organizations from answering or complying in any way with boycott requests that would cause discrimination against U.S. citizens or firms on the basis of race, color, religion, sex or national origin.

"Also, in January 1976, the Administration submitted legislation to prohibit a business enterprise from using economic means to coerce any person or entity to discriminate against any U.S. person or entity on the basis of race, color, religion, sex, age, or national origin.

"In March 1976, the President signed into law the Equal Credit Opportunity Act, which amended the Consumer Credit Protection Act making it unlawful for any creditor to discriminate against any applicant with respect to a credit

transaction on the basis of race, color, religion, national origin, sex, marital status or age.

"The Comptroller of the Currency, the Securities and Exchange Commission and the Federal Home Loan Board have all issued statements to the institutions under their jurisdiction against discriminatory practices.

"In recent months, the Administration has also taken the following actions to make clear that it does not support boycotts of friendly countries:

"1. In November 1975, the President instructed the Commerce Department to require U.S. firms to indicate whether or not they supply information on their dealings with Israel to Arab countries.

"2. In December 1975, the Commerce Department announced that it would refuse to accept or circulate documents or information on trade opportunities obtained from materials known to contain boycott conditions.

"3. The State Department instructed all Foreign Service posts not to forward any documents or information on trade opportunities obtained from documents or other materials which were known to contain such boycott provisions.

"4. In December 1975 and January 1976, the Federal Reserve Board issued circulars to member banks warning them against discriminatory practices and reiterating the Board's opposition to adherence to the Arab boycott.

"5. In January 1976, the Justice Department instituted the first civil action against a major U.S. firm for violation of anti-trust laws arising out of boycott restrictions by Arab countries. The Justice Department has a continuing investigation in this area."

Certainly no reasonable person, in my mind, could or should contend on the basis of this record that the Administration is "winking its eye" at the Boycott. I also take note of the fact that the United States alone among industrialized nations has a clearly established policy and program of opposition to foreign boycotts of friendly countries which, of course, includes the Boycott of Israel.

I believe that the type of restrictive legislation recommended by this Report would indeed be harmful to the role that the United States has played and continues to play in helping to achieve a settlement of the Arab-Israeli dispute via negotiations. As I have pointed out above, what I consider to be adequate and effective steps have been made the President to prevent discrimination in export transactions based on race, creed, religion or national origin. Even the Subcommittee Report takes cognizance of the fact that acts of discrimination do not characterize the Arab Boycott. Only 15 such religious/ethnic clauses were discovered by the Subcommittee Staff's intensive nine-month review of the Arab Boycott.

These types of clauses are clearly obnoxious to all of us. I believe that the 15 cases reported are exactly 15 too many, but I further believe that the regulations and forceful position taken by the Administration remedy this evil. New legislation as proposed in this report might very well result in stronger Arab enforcement of their boycott regulations. Arab leaders have publicly stated that passage of restrictive legislation would be viewed as an unfriendly act forcing them into a retaliatory posture. Our past experience with legislation such as that attempting to increase the outflow of Soviet Jewish emigrants, which with respect to its moral underpinnings is similar to that now being proposed, resulted in the opposite effect.

I agree totally with the recommendation made in the Subcommittee's Report calling for an increased level of diplomatic efforts in order to minimize the impact of the foreign-imposed restrictive trade practices on American commerce. This is precisely the position of the Administration which is seeking diplomatic modifications of the onerous and obnoxious manifestations of the boycott. Legislation, on the other hand, may very well be viewed by the Arab countries as a laying down of the gauntlet by seeking direct confrontation. I opt for negotiation rather than confrontation. Confrontation, or even perceived confrontation, would tend to reduce trade and commercial ties between the United States and the Arab nations with a concommitant reduction in this country's effectiveness in bringing about a lasting peace. I believe that Assistant Secretary of State, Joseph A. Greenwald, made this point best in his testimony before the House International Relations Committee when he said:

"Continued quiet diplomacy and the efforts of individual firms offer the best chance at this time of lessening the impact of the boycott on U.S. firms. This approach has had some success over the past year, as is evident in the modification of some boycott procedures which had been in effect over a long period of time."

One of my major criticisms of this report is that nowhere in this rather lengthy and exhaustive treatment of the Arab Boycott is there any discussion of two questions which I feel are extremely important: access to Middle East oil and oil prices. I am obligated to discuss these points, because this country is now 41 percent dependent on foreign sources of oil. The reason for this high rate of dependency is clear. The Congress has failed to promulgate a rational and coordinated energy policy that would encourage domestic production. Quite to the contrary, Congress has gone out of its way to stifle domestic production as any careful and reasonable observer will report. I have always had great misgivings about dependency on foreign sources. As far back as 1969, I warned the nation, when the question of elimination of the oil import quota was under consideration, that removal of some boycott procedures which had been in effect over a long period of time," well that this section would lead to ever-increasing dependence on Arab oil. It did. At the time of this discussion of the removal of the quota, foreign oil was selling for $2.28 a barrel, and we were importing 13.3 percent of our needs from these foreign sources. Domestic oil was selling for $3.18 per barrel. The hue and cry went up that we should import more and more of this cheap oil, because it was cheaper than domestic oil. The argument for more imports was ostensibly made in the name of the consumer. I indicated at that time that we should not be deceived by these low prices, and further indicated that in my opinion as soon as we became so reliant on foreign sources that we could not do without foreign oil, the prices would go up markedly. They did. I was not prescient enough to think that there would be an embargo, but when it came and when the high prices came, I was not surprised.

Getting back to my original question, do we really know what impact the legislative recommendations advanced in this report do to oil prices and oil access. I think not, and as a result, I am deeply concerned. The Subcommittee's Report has done nothing to alleviate my concern, only to heighten it. This is why I take the position that I do. We are in a very delicate position. How will such a legislative frontal attack be received by the voices of moderation in the Arab world, such as Saudia Arabia, when we challenge what they perceive to be their sovereign right? I do not know the answer, nor do I believe that anyone in Congress knows this answer. I, therefore, counsel caution and continued diplomatic efforts. As I indicated earlier and I will reiterate it again so that there will be absolutely no misinterpretation of my remarks—discrimination on the basis of religion, creed or national origin is intolerable, but I believe that the Administration is dealing and has dealt with this problem.

I am totally opposed to boycotts of any sort with the exception of those for national security purposes. I find inconsistent the position taken by the majority of the members of this Subcommittee with respect to this boycott. I point out their inconsistency because most of the members supporting this report have voted for and favor boycotts against Rhodesia and also secondary boycotts in this country.

SUBCOMMITTEE RECOMMENDATIONS

Now that I have given in my rather lengthy prologue, my general views on this matter, I would like to turn to some specifics in the Subcommittee's Report. I will address myself to each of the Subcommittee's recommendations.

Recommendation No. 1

This recommendation calls for a prohibition against persons providing information to foreign concerns as to whether or not their firm or any of its subsidiaries or subcontractors are "blacklisted." I, of course, would very much like to see this type of blacklisted company clause eliminated, but I do not believe as the Subcommittee Report recommends that we should do it via legislative mandate. The issue at which this recommendation is directed is the refusal of one U.S. company to deal with another U.S. company for the purpose of enforcing the boycott. I do not believe that we should legislatively prohibit a company from answering this question, because what may happen is that you could very well be depriving a trade opportunity to a company that is not blacklisted nor deals with any companies that are not because that company is refusing to deal with blacklisted companies. The company in question may not be blacklisted. None of its subsidiaries may be blacklisted, and it may have no "business need" to deal with a company that is blacklisted. If the U.S. companies are prohibited from answering these questions, the foreign concerns will not end their search

for this type of information, but will be left with their own sources of information. These sources may be completely erroneous. What should we do then? I say let us prohibit the evil that this recommendation addresses itself to. Secretary Richardson should promulgate regulations prohibiting a company from agreeing to refuse to deal with another U.S. company at the request of a foreign concern for the purpose of enforcing the boycott, and of course, any such request would be required to be reported to the Department of Commerce. By utilizing this approach, it would make clear that the United States is not interfering with or impinging upon the sovereign powers of any foreign country but is only attempting to deal wtih its own internal affairs.

Recommendation No. 2

This recommendation deals, of course, with what I perceive to be the primary impetus for the consideration of this entire question of the boycott, because it deals directly with the discrimination question. The recommendation would in essence prohibit U.S. business from providing information to any foreign concern about the race, creed, national origin, sex, religion or political beliefs of any citizen when the person furnishing that information knows or should know that the information is for the purpose of discrimination against or boycotting any person or concern. I agree with the intent of this recommendation, but I do not believe it is necessary to amend the Export Administration Act. The Commerce Department already has regulations in effect (Section 369.2 of the Export Administration Regulations) which effect the end sought by this recommendation. The regulations provide as follows:

"*(a) Prohibition of Compliance with Requests.*—All exporters and related service organizations (including, but not limited to, banks, insurers, freight forwarders, and shipping companies engaged or involved in the export or negotiations leading towards the export from the United States of commodities, services, or information, including technical data (whether directly or through distributors, dealers, or agents), are prohibited from taking any action, including the furnishing of information or the signing of agreements, that has the effect of furthering or supporting a restrictive trade practice fostered or imposed by foreign countries against other countries friendly to the United States, which practice discriminates, or has the effect of discriminating, against U.S. citizens or firms on the basis of race, color, religion, sex or national origin."

The Commerce Department has interpreted this regulation to prohibit U.S. companies from answering questions about their involvement in "Pro-Israeli Activities" such as whether or not the U.S. companies supported activities such as the United Jewish Appeal. I, then, believe that the need for this recommendation has been rendered moot as a result of the regulations that have already been promulgated.

Recommendation No. 3

This recommendation calls for the amendment of the Export Administration Act to allow domestic businesses to provide importers or their agents with only affirmative factual information concerning the origin of goods, only affirmative information concerning vessels, and only affirmative information concerning insurers. This recommendation is directed at three clauses with the shipping clause being the most important according to the Subcommittee's computations. I do not find this recommendation objectionable in its intent. I do, however, believe that a better approach would be to have the regulations under the Export Administration Act provide for this requirement.

Recommendation No. 4

This calls for improvement in the Commerce Department's data collection system. I agree completely with this recommendation.

Recommendation No. 5

I have a very real problem with this recommendation and I disagree with the notion that there should be public access to filed export reports. I also do not agree with the Subcommittee's proposition that public disclosure would aid in compliance. I believe that compliance can be best assured by what the Subcommittee Report proposes in Recommendation No. 7, increased Congressional oversight. The difficulty with public exposure is that companies could be subjected to domestic pressures and economic reprisals even though trading with those countries participating in the Arab Boycott is perfectly legal.

Recommendation No. 6

I agree wholeheartedly with this recommendation for increased diplomatic efforts. This is the approach that I feel will bear the most fruit both from the standpoint of promoting a settlement of the Arab-Israeli conflict, and also from the standpoint of seeking diplomatic modification of the objectionable aspects of the Boycott. I note in passing that all of the available information that I have seen indicates to me that the Boycott is rather loosely enforced or not enforced at all. I, therefore, believe that there is definitely room to negotiate and that avenue should be pursued with the strongest possible vigor.

Recommendation No. 7

I agree that there should definitely be increased Congressional oversight, as I indicated in my discussion of Recommendation No. 5. I do not agree, however, that the Commerce Department has a poor record in carrying out the statutory policy against foreign-imposed boycotts. On the contrary, I believe that the record of actions taken by this Administration which I set forth earlier, clearly indicates an acute awareness of the statutory policy, and a demonstrated willingness to take positive steps in fulfillment of those ends.

SUBCOMMITTEE HEARINGS

The Subcommittee Report indicates in footnote 30 that it is not clear what Secretary Morton meant when he said: "In fact, a U.S. firm trading with Arab countries may very well be trading with Israel as well, since the Arab Boycott list does not extend to U.S. firms engaging in routine trade with Israel."

I believe that I understand what the Secretary meant when he made that statement. He, in my opinion, was addressing himself to a recommendatory set of "Principles" adopted by the Arab League Council. These so-called "Principles" have been adopted by the League over the course of many years, and their purpose is to specify the types of business activities which the Arab government look upon as support Israel. Always, bear in mind that the boycott arose out of and is a continuing manifestation of the conflict between the Israelis and the Arabs.

Returning again to the "Principles", they are primarily directed towards major contributions to Israel including such activities as:

1. Establishment of a plant in Israel.
2. Supply of large portions of component parts for products assembled in Israel.
3. Grants of manufacturing licenses.
4. Right to use a company's name.
5. Entry into a partnership with Israel.
6. Supply of technical expertise to Israel.
7. Acting as agents for Israeli companies.
8. Being principal suppliers of Israeli products.
9. Refusal to answer boycott questions.

Secretary Simon in his testimony before the House International Relations Committee which I referred to earlier confirmed what Secretary Morton's understanding of the boycott was when he said: "A number of firms do business with both Israel and the Arab countries. Recently, a prominent U.S. business leader informed me that he had successfully concluded a commercial contract with an Arab country even though he maintains extensive ties with Israel. The Arab countries, in fact, are considering the adoption of a standard policy of exempting from the boycott list any firms which make as significant a contribution to them as to Israel."

Thus, what I believe Secretary Morton was saying was that companies that did not make major contributions to the economy of Israel were in effect outside the purview of the boycott. This brings us, of course, to the bubble gum company and the parking system company mentioned in the report. I do not believe that we have enough facts to make any judgments about either. The Subcommittee Report seems to indicate that the boycott is directed exclusively at the ability to wage war. My understanding of the "Principles" is that the question of ability to wage war is only a part of the reason for the boycott. The boycott, recall, is "economic warfare", and it is primarily directed at the economy of the State of Israel. It may also be with respect to the companies cited in the report that they have been the victims of erroneous information acquired about them or their activities. I addressed that point earlier in these views in my discussion of the recommendations.

I would now turn my attention to the discussion in the report concerning Secretary Morton, and his initial refusals to supply the Subcommittee with the "Exporter Reports" which had been subpoenaed. I voted against the resolution adopted by the Subcommittee which indicated the Subcommittee's belief that Secretary Morton was in contempt of Congress. I would do so again today if the same issue was presented to me.

What the Subcommittee's Majority and Secretary Morton had was a legitimate dispute over the interpretation of a statute. The Subcommittee report indicates that it was and that the Secretary's position was "legally untenable." I have re-checked e Constitution of the United States paying particular attention to those powers granted unto Congress, and I find no reference to any power given unto Congress to find "legally untenable" any interpretation of statute. Article I of the Constitution is the power source for most powers of the Congress, and there is not even a passing reference to a role to be played by Congress in interpreting statutes. There are other references to powers possessed by Congress in other Articles and Amendments but they do not mention this power either. It appears from my reading of the Constitution that what the framers intended when they produced this document was to give unto Congress the legislative powers in this government. As Chief Justice John Marshall said in *Marbury* v. *Madison*, 1 Cranch 137, (1803): "The powers of the legislature are defined and limited; and those limits may not be mistaken or forgotten, the Constitution is written." I then look at Article III of the Constitution and that seems to vest Judicial power in "one supreme court and such inferior courts as Congress may from time to time ordain and establish." I note again what Chief Justice Marshall said in *Marbury, supra*: "It is emphatically the province and the duty of the Judicial department to say what the law is." I believe that *Marbury* v. *Madison* is just as good law today as it was in 1803.

My point here is clearly that it was simply not within our power to decide which was the correct interpretation of the statute. The Subcommittee's Majority had one interpretation Secretary Morton had another interpretation. The place to resolve this matter was in the courts, because just as Chief Justice Marshall said, the Judicial Branch says what the law is, Congress enacts laws.

Great legal scholars often differ over the interpretation of statutes and our system of government provides a means to resolve those differences. The way you settle those differences is by going to court and the courts say what the law is. My colleague from New Jersey, Mr. Rinaldo, asked Secretary Morton when he testified before our Subcommittee if he would comply with the Subcommittee's subpoena if a court found that his and the Attorney General's interpretation of the statute was incorrect. Secretary Morton responded: "Yes, indeed." Mr. Rinaldo further suggested that the court was the proper forum for the resolution of this dispute and indicated that an action for a declaratory judgment be commenced. Secretary Morton suggested to the Chairman of our Subcommittee that he was amenable to going to court, and settling this matter. The Secretary offered to go to court, but his offer was not accepted.

So even today, the matter of the proper interpretation of Section 7(c) of Export Administration Act has not been decided by the branch of government that says what the law is. Secretary Morton was pressured, chastised, criticized, and castigated because his interpretation of a statute differed from the Subcommittee's Majority. I did not think it quite fair then and I still do not today, especially when there was an available forum to resolve the case.

POTENTIAL INTERNATIONAL IMPLICATIONS

The Subcommittee's report gives far too short a shrift to the international implications of its proposed recommendations while accentuating all other factors. The report makes the cavalier statement that the "United States has a major competitive advantage in agricultural products and wide variety of manufacturer products." I ask the question on what do they base this off-hand remark. The report itself develops no material that would lead one to that conclusion as a matter of fact there is absolutely nothing in the report to substantiate it. As the table in Appendix I illustrates, if the United States is advantaged there are other countries that are more advantaged.

As you will note from the table, Japan is a bigger trading partner with Iraq, Kuwait, Oman, Qatar, United Arab Emirates, Yemen, Arab Republic, and Libya

than the United States. West Germany is a bigger trading partner with Syria, Oman, and Iraq than the United States. West Germany and Japan combined have greater market shares than the United States with every country participating in the boycott except for Egypt. When you compare the market share possessed by the United States and those of the rest of the countries of the world. I see no evidence of inherent competitive advantage.

The report says that the United States has a competitive advantage in agriculture and certain manufactured products. I cite the following table in Appendix II which illustrates that of the $4.4 billion in 1975 exports to the boycott countries, only 10.8% is for agricultural products.

As I look over the rest of this list of exports, I am very hard pressed to find a commodity that cannot be produced by other industrialized countries such as West Germany, Japan or the United Kingdom. Many of those pushing for restrictive legislation which, in my opinion, are in reality counter-boycotts against the Arab nations, have said that the Arabs could not afford not to trade with the United States, because we supply them with the equipment needed to drill and produce oil. I must point out that this type of equipment is definitely available from other sources. Admittedly, our oil field equipment is more technologically advanced than our competitors abroad, but the point is that the Arabs simply do not need our sophisticated equipment. The type of drilling in this area of the world does not require it and foreign equipment is more than adequate to meet their needs.

In Appendix III, which I have attached, there is another table which I find equally revealing. This table shows exports to the Arab countries as compared to imports from those same countries into the United States. The table shows, for instance, in 1976 our imports from Saudia Arabia alone amount in dollar value to over $2.6 billion with exports totaling $1.2 billion. I need not remind anyone the bulk of the $2.6 billion are petrodollars. We, however, recouped nearly 50% of those petrodollars for our country with exports to Saudia Arabia. Within the Arab countries of the Near East, all of whom participate in the boycott, our total imports amounted to $3.4 billion but our export to those countries recovered $2.4 billion or approximately 70%. Given the large amount of imports from these countries it is essential in my mind that we continue to actively pursue trade opportunities with the Arab world in order to reduce this balance of payments deficits.

I believe the point of this discussion then, and what the statistics show, is that we do not have a great competitive advantage over the rest of the world. Our market share is small, but in terms of dollars it is extremely important and we, as a nation, cannot afford to lose any of the trade that we now have. The $4.4 billion accounts for between 200,000 to 300,000 jobs. We simply cannot afford to lose any of these especially at this time when our economy is in the midst of recovery.

The Subcommittee makes another off-handed statement, this one about Saudia Arabian officials making statements to the effect that enactment of new anti-boycott legislation in Congress would result in a loss of U.S. trade. I do not pass off these remarks as lightly as the report, because I for one remember the Arab oil embargo even if no one else does. Let me tell you exactly what the Arab officials are saying about the possibility of restrictive legislation concerning the boycott. These statements reveal no readiness to abandon the boycott in response to legislation. The head of th Arab League of States, Mohammed Mahjoub, stated in Damascus early this year that "efforts to restrict American companies from trading with Arab states, because some do not like the idea of a boycott of Israel could result in those companies losing the growing Arab markets." Hisham Nazer, Minister of Planning for Saudia Arabia recently said, "but we have our boycott legislation and we do not intend to change it." Dr. Gazial-Gusabi, Minister of Electricity for Saudia Arabia said in New York in April of this year that "this growing and mutually advantageous relationship is threatened by attempts to break the Arab boycott of Israel in the United States." Another Saudia Arabian Minister, Mohammed Yamani, in an interview with a *New York Times* correspondent in Jidda, Saudia Arabia last spring noted that "if we don't find the right companies in the United States we can move to the rest of the world and find the same standard."

The most important statements that I have seen on this, however, come from Crown Prince Fahd of Saudia in an interview that appeared in the *Middle East Economic Survey* of August 2, 1976. In that interview he was asked about the

efforts in the Congress to pass anti-boycott legislation and he made the following statements:

"Successful or not this campaign will have no influence on our policy whatsoever."

"We shall go with the boycott, which is a legitimate political weapon."

"A policy of not doing business with Saudia Arabia will only hurt American firms and consequently, the American economy and people. We for our part have many options in many parts of the world."

Are these idle threats? I really do not know, but I believe that they merit our consideration and more discussion than a passing reference to them. Crown Prince Fahd is an official in the highest level of his government and what he says does in my mind require some very careful thought.

CONCLUSION

I am not one to countenance threats by anyone including the Arabs. My natural inclinations are to stand up and resist, but we have very little to resist with due to the lack of an energy policy that will encourage domestic production of oil and natural gas. This Congress has done next to nothing to remedy this situation. We need at this time oil from the Middle East, and we also must get as many of those petrodollars back into our economy.

I believe that what I have proposed will effect the end that we all desire without jeopardizing our trade alliance with the Arab world. My position, as I see it, is different in form not substance from the Subcommitte's report. The ends to be achieved by both recommendations are the same and only the means to achieve that end are different.

HONORABLE W. HENSON MOORE

My good friend and colleague, the Honorable W. Henson Moore has asked me to point out in these views that he voted 'present" on the motion made in Subcommittee to adopt the Subcommittee report. The reason for his vote in his vote in this manner was because he was not a member of the Subcommittee when it held hearings on this subject.

JAMES M. COLLINS.

APPENDIX I

19/4—NEAR EAST AND NORTH AFRICA IMPORTS TOTALS AND MAJOR SUPPLIERS IN PERCENT

	Total (millions)	United States	West Germany	France	Japan	United Kingdom	Italy	U.S.S.R. East Europe, China	All other countries
Bahrain	$451.0	17.8	4.6	1.8	14.5	14.4	3.3	.....	43.5
Iraq	2,257.1	10.4	15.0	6.8	15.6	5.3	3.4	10.6	33.0
Jordan	482.2	11.3	9.3	2.4	4.7	7.7	3.8	7.0	53.8
Kuwait	1,669.8	14.1	10.4	4.2	17.1	9.0	4.4	5.3	35.6
Lebanon	2,417.4	13.1	9.5	10.0	4.3	6.5	10.3	5.3	41.1
Oman	452.4	9.0	9.6	4.3	10.9	24.4	4.6	.....	37.3
PDRY	243.4	5.6	3.5	.9	6.6	6.3	1.6	.....	74.4
Qatar	270.9	10.3	6.2	2.6	17.9	14.0	2.9	.....	46.2
Saudi Arabia	4,082.8	22.5	7.7	3.2	18.2	7.6	3.5	1.6	35.6
Syria	1,230.7	2.8	13.0	9.8	4.3	3.4	8.6	15.8	42.3
United Arab Emirates	1,841.8	13.8	5.4	4.1	18.4	13.6	2.2	.....	42.5
Yemen Arab Republic	218.8	4.3	7.0	4.4	17.9	6.9	2.3	.....	57.2
Algeria	4,131.1	8.4	12.8	34.5	4.1	3.4	8.6	4.3	23.7
Libya	3,460.1	4.2	12.4	11.1	7.4	4.6	27.0	.....	33.2
Morocco	1,909.3	9.9	10.0	28.4	1.4	2.8	4.4	6.9	36.0
Tunisia	1,135.6	8.1	8.0	30.9	.5	3.6	10.9	3.7	34.3
Egypt	2,670.5	18.7	8.6	14.3	3.0	5.0	7.6	7.4	35.3
Iran	7,742.1	24.6	16.2	3.7	14.4	9.3	4.0	5.6	22.2
Israel	5,388.7	14.0	12.2	2.9	2.4	10.0	4.3	.2	53.9
Total [1]	42,055.7	14.3	11.5	10.4	9.3	7.4	7.1	4.1	35.5

[1] Rough estimates.

Source: Direction of Trade Annual 1970-74, IMF/IBRD.

APPENDIX II

[In millions of dollars]

Commodity	Saudi Arabia	Egypt	Lebanon	United Arab Emirates	Kuwait	Iraq	Libya	Jordan	Syria	Bahrain	Oman	Qatar	Yemen	Yemen (Aden)	Group total
Total	1,501.8	682.7	402.3	371.5	366.1	309.7	231.5	195.4	127.8	96.2	74.7	50.3	8.3	2.8	4,415.1
Food and live animals	106.1	244.9	27.5	6.5	7.0	82.0	3.7	19.0	36.5	2.4	1.0	.8	4.0	.2	541.6
Wheat and wheat flour	46.0	168.5	7.9	1.0	----	13.9	----	16.9	25.0	----	----	----	1.7	----	280.9
Rice, unmilled	37.1	----	.4	.5	.4	64.0	.7	.2	9.0	.1	.1	.1	2.1	.1	114.8
Corn or maize, unmilled	.2	68.5	12.9	.1	.1	----	.1	----	1.5	----	----	----	----	----	83.4
Animal feeding stuff	4.5	2.6	1.7	.1	.6	----	----	.2	.2	.1	----	----	----	----	10.0
Beverages and tobacco	18.3	16.8	14.3	13.7	14.7	.7	12.0	.3	16.1	5.3	.8	.8	----	----	113.8
Tobacco, unmanufactured	----	14.4	6.0	----	----	----	7.5	----	6.4	----	----	----	----	----	34.3
Cigarettes	17.8	2.4	7.9	13.3	14.5	.7	4.4	.2	9.6	5.2	.7	.7	----	----	77.4
Crude materials, inedible	6.2	19.7	10.6	3.6	2.5	10.1	1.0	.9	2.9	.3	.1	.8	.1	----	58.9
Wood, lumber, and cork	2.1	.1	1.3	----	.1	----	.6	----	.1	.1	----	.7	----	----	5.1
Pulps and wastepaper	----	9.7	.1	----	----	7.7	----	.1	----	----	----	----	----	----	17.6
Raw textile fibers and waste	.3	4.4	3.2	.1	----	.1	----	.5	1.0	.1	----	----	----	----	9.7
Mineral fuels, lubricants	13.0	15.5	.5	1.7	2.3	3.7	.8	1.2	.9	2.9	.2	.7	----	.6	44.0
Lubricants	9.7	3.7	.4	1.0	1.5	.2	.7	1.0	.8	.4	.2	.3	----	.6	20.5
Oils and fats	9.7	159.7	3.8	.7	1.7	1.8	----	.2	.2	.4	.1	.2	.1	----	178.6
Animal oils and fats	----	42.6	3.0	----	----	1.8	----	----	----	----	----	----	----	----	47.4
Vegetable oils and fats	9.1	117.1	.8	.5	1.6	----	----	.2	.2	.4	.1	.2	.1	----	130.3
Chemicals	33.2	25.2	12.2	12.6	12.0	14.2	11.2	2.2	5.4	8.4	1.1	1.6	.2	.1	139.6
Chemical elements and components	4.8	12.1	3.2	1.4	.7	.8	.3	.1	.1	4.3	.2	.1	----	----	28.3
Pharmaceutical products	8.8	3.1	4.5	1.3	1.5	3.2	1.9	1.1	3.3	.2	.2	.4	.1	.1	29.7
Essential oils, perfume materials	5.2	1.0	1.2	3.1	2.8	.2	1.2	.1	.2	1.1	.4	.5	----	----	17.0

APPENDIX II—Continued

[In millions of dollars]

Commodity	Saudi Arabia	Egypt	Lebanon	United Arab Emirate	Kuwait	Iraq	Libya	Jordan	Syria	Bahrain	Oman	Qatar	Yemen	Yemen (Aden)	Group total
Manufacturers goods, by chief material	122.1	69.0	21.5	76.9	22.2	34.1	39.1	2.9	7.6	9.4	31.0	5.3	.4	.1	441.6
Rubber manufacturers	6.7	.9	1.0	2.6	2.9	1.1	1.0	.3	.8	.3	.3	.4			18.3
Paper, paperboard, and manufacturers	8.1	21.5	8.9	1.3	2.8	.4	1.3	.5	.7	.6	.2	.2			46.5
Textile yarns, fabric, art	8.8	.3	5.7	3.3	3.3	.2	.9	.7	.8	.7	.1	.5			25.3
Steel pipes and tubes	23.8	35.9	.2	53.8	3.5	20.7	27.2		1.2	2.8	29.1	2.7	.4		201.3
Metal structures and parts	30.0	1.3	.4	4.3	3.5	3.2	1.2	.2		1.4	.3	.2			46.0
Machinery, transport equipment	927.7	115.1	279.4	226.1	276.0	148.9	133.6	50.2	54.2	52.1	33.3	36.2	2.1	1.5	2,337.0
Power generating machinery	48.9	9.1	8.7	9.4	7.4	11.5	11.4	2.5	3.7	2.5	1.1	1.2			117.4
Agricultural machinery	25.9	3.0	6.4	5.8	2.6	6.8	8.1	1.8	4.5	.2	.9	.6	.3	.4	67.3
Office machines	2.7	2.4	1.9	.4	.8	.5	.9	.3	.1	.7	.1	.3		.2	11.3
Textile, lesther machinery	.5	6.1	.5	.2	.1	2.4	.5	.1	.7	.1					11.2
Construction, mining machinery	64.3	19.1	5.6	53.6	12.1	30.4	19.1	4.5	3.7	14.7	3.8	3.2	.8	.3	235.2
Heating, cooling equipment	58.8	2.9	7.2	40.7	22.1	11.1	5.8	.8	.7	6.5	3.7	4.9	.2		165.4
Pumps and centrifuges	47.1	5.4	2.7	15.9	7.6	17.2	17.5	.6	.2	4.1	2.5	1.3		.2	122.3
Mechanical handling equipment	40.2	3.4	8.5	11.5	12.9	10.1	4.4	1.9	3.3	3.0	.8	3.1			103.1
Electric power machinery	43.3	14.7	4.5	13.8	18.8	5.0	4.7	.9	.4	.9	2.2	1.3			110.5
Telecommunications equipment	30.1	1.6	3.4	4.2	2.0	1.6	3.7	3.7	1.8	1.6	5.2	1.2	.4		60.5
Electric household ppl	14.7	.1	3.6	1.4	5.7	.3	1.4	.6		.6	.2	.5			29.1
Road motor vehicles and parts	250.2	25.5	46.0	37.1	151.3	23.2	11.6	8.8	28.9	5.6	4.9	14.6	.1	.1	607.9
Aircraft and parts	175.0	1.6	171.9	5.9	15.8	4.7	29.7	14.3	—.1	.2	3.6	.3			423.1
Ships, boats, floating structure	4.0	1.5		6.0	2.4	2.4	1.2	.6		3.2	.4	.4			22.1
Miscellaneous manufactured articles	69.8	10.8	21.9	10.5	14.3	7.8	18.6	3.4	2.0	4.0	2.5	2.6	.3	—.1	168.6
Travel goods, handbags, etc	2.7		.5	1.0	1.8		.6	.1	.1	.2	.3	.3			7.7
Clothing	3.5	.7	1.0	1.8	3.9		3.3	.4	.1	.7	.1	.2	.1		15.8
Medical instruments	8.4	.5	1.1	.2	.4	.5	1.0	.3	.2						12.6
Measuring, controlling instruments	10.4	3.7	.8	2.1	1.6	3.5	5.4	1.0	.4	1.1	1.1	.8			31.9
Special category (military)	157.0	.2	1.8	10.1	4.9	.1	2.3	112.3		.3	1.0		1.0	.1	190.0

Source: U.S. Department of Commerce, Bureau of the Census, FT 455 (U.S. Exports, Country by Commodity Grouping).

APPENDIX III

U.S. TRADE WITH NEAR EAST AND NORTH AFRICAN COUNTRIES 1974, 1975, JANUARY TO JUNE 1975, 1976

[In millions of dollars]

	U.S. exports, including reexports				U.S. general imports			
			January to June				January to June	
	1974	1975	1975	1976	1974	1975	1975	1976
Total for area	6,282.3	10,131.3	4,778.1	5,479.0	6,647.7	8,774.3	3,897.2	6,583.6
Percent of U.S. total	6.4	9.4	8.9	9.6	6.2	8.5	7.6	10.8
Arab countries of Near East	2,162.4	3,502.9	1,547.0	2,436.0	2,591.8	4,198.6	1,819.0	3,407.0
Bahrain	79.7	90.2	45.1	163.8	70.4	114.9	39.0	6.6
Iraq	284.7	309.7	158.8	174.0	1.0	22.6	5.3	1.8
Jordan	105.2	195.4	92.0	135.8	.2	.9	.2	.7
Kuwait	208.5	366.1	169.4	222.2	15.4	126.1	64.2	32.8
Lebanon	286.9	402.3	226.1	38.0	32.0	35.2	25.5	3.9
Oman	36.5	74.7	30.9	29.0	24.3	58.4	13.9	75.4
PDRY	12.3	2.8	1.5	2.6	6.0	.6	.2	.4
Qatar	33.6	50.3	22.4	36.1	91.0	64.4	32.2	35.6
Saudi Arabia	835.2	1,501.8	537.5	1,228.2	1,926.5	2,986.7	1,329.2	2,614.6
Syria	39.6	127.8	70.9	173.2	2.3	7.4	4.4	6.6
United Arab Emirates	229.7	371.5	188.2	223.2	422.1	781.2	304.7	630.5
Yemen Arab Republic	10.5	8.3	4.2	9.9	.6	.2	.2	.1
Arab countries of North Africa	1,180.6	1,835.5	979.5	946.8	1,300.2	2,640.4	1,093.3	2,179.2
Algeria	315.1	631.8	305.8	241.2	1,169.6	1,448.0	765.4	1,037.8
Libya	139.4	231.5	133.7	85.6	1.5	1,120.1	290.0	1,033.7
Morocco	184.0	199.5	108.3	168.6	22.4	11.3	6.0	10.6
Tunisia	86.9	90.0	46.6	46.8	23.8	28.2	20.9	34.4
Egypt	455.2	682.7	385.2	404.6	82.9	32.8	3.0	62.7
Non-Arab countries Near East	2,939.3	4,792.9	2,251.6	2,096.2	2,755.7	1,905.3	984.9	997.4
Iran	1,733.6	3,241.7	1,592.1	1,365.4	2,459.8	1,579.0	829.3	797.3
Israel	1,205.7	1,551.2	659.5	730.8	295.9	326.3	155.6	200.1

Note: Including special category commodities; imports c.i.f. value; exports f.a.c. value.

Source: U.S. Department of Commerce, Bureau of the Census, report FT 990. Compiled by: Commerce Action Group for Near East Bureau of International Commerce, July 27, 1976.

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